

IN THE WEST VIRGINIA FEDERAL AND STATE EMPLOYERS' DISSENTANCE
BOARD IN WEST VIRGINIA, WEST VIRGINIA.

Maxine Alderman

Plaintiff,

vs.

DOCKET NO. 06-08-141

Putnam County Board of Education

Defendant.

Transcriptions of audio CDs provided by the Law Office of James Baker, 100
Capitol Street, Suite 400, Charleston, West Virginia, 25304, identified as the CDs in
Affidavit 06-08-141, 1-4-3-4 etc as the above-captioned matter.

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JUDGE JOHN LADORE: (Qualifies hearing off) (readable) proceedings in the matter of Norman Alderman versus the Frederick County Board of Education, Docket Number 04-01-042. That notice has been given. The case is properly captioned before District Atty. Spectator, Administrative Law Judge on the 17th day of July 2006. Witness is present and is represented by Counsel James Haber and the Board of Education is represented by Counsel Greg Bailey. This was a disciplinary termination so the Board of Education has the burden of proof. Do you have an opening statement Mr. Bailey?

MR. BAILEY: Yes, just very briefly. As we noted before we went to the record, the facts basically about what occurred or already in the record. We don't really intend to spend a great deal of time reviewing those facts. You have the benefit of the extensive communications by Mr. Alderman with the Transfer Hearing itself as well as the Termination Hearing that occurred. The primary focus of the evidence that we intend to offer today supports the adverse action that Mr. Alderman's conduct will have, or would have had, upon the ability of the Board to effectively conduct its affairs. I think the evidence clearly demonstrates that Mr. Alderman engaged in intentional conduct that was motivated by him as a tactic to hinder Board's from reaching that point having its equally efficient and engaged in conduct behavior and then if the inquiry were proved to point to that as a motivation what then would be based on facts. And I have heard that the respondent states that well that conduct was based a thing in its process Mr. Alderman's long service to the Board without a history of any disciplinary problems. However, if you just look at the appeal that was filed by Mr. Alderman and the language that is contained in the appeal that he filed, it is readily apparent that Mr. Alderman persisted in belief that he has an entitlement to engage in conduct behavior. He has allowed us

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statement of regret or remorse or even acknowledge that he did anything wrong. And I think this is probably highlighted by the fact that he looked at the relief that he is seeking, (possible) seeking some apology from the Board. And there are not of acknowledgment that this kind of behavior is something that (possible), or that you can't call the superintendent a cocksucker, you can't call the treasurer a cocksucker and a thief and a law enforcement is the best without consequences. We think the evidence still illustrates that there is no intention whatsoever that the president of the case intends to offer his resignation. To the contrary he believes that he has every entitlement to continue to behave exactly as he has behaved. As the focus of our evidence is going to be that the conduct has the effect, or had the effect, of undermining the effectiveness of the Board as decisions placed before Alderman's persistence is the belief that he is entitled to engage in the very conduct that resulted in his termination and the likelihood that the Board would suffer as a result of that or intent of its ability to carry out its functions as a Board will be the focus of our evidence.

JUDGE SPATAPONE: Okay. Thank you.

MR. HARRIS: Your Honor, it is critical to point out that the conduct that Mr. Bailey refers to is actually Mr. Alderman's speech. If you look at the termination letter and if you look at the charge that they complain of that he read in his teacher's building, that is the basis for the termination. Mr. Alderman is a 20 year veteran of the school board. He was the leader of the past. He has engaged in extra-curricular activities almost every year he has been a member of the school board. He has never been been disciplined, never been reprimanded, never been suspended with or without pay. And based on the charge that formed they are taking this state's job. Without any consideration whatsoever

of any type of repressive discipline. Despite the fact that the school board policies require that the Board is to serve to assist personnel in every way possible to adjust to their positions and to perform their duties satisfactorily. The school board on this instance never gave him a warning, never offered him an improvement plan. And this is all assuming that they ever fire him for his speech. I'll get to that in a second. But even if they could fire him for his speech, or what he did in the context of the transfer hearing. Think of you listen to the video and watch the video, by now passed the video time. He never threatened anybody, he never assaulted anybody. He was never held out of order. During that entire meeting nobody told Mr. Alderman you are out of order. There were people in attendance that will probably come forward readily to say what they felt about it, but the Board obviously never felt he was out of order. And there's two several and one for speech and his position as that transfer hearing someone's 20-year employee is one as a lot of others. But let's go to the heart of the issue. I don't know if you know anything about Mr. Alderman, but he is not only an excellent teacher, but he is also a community member. He has a church. He has raised his family in the community. He's got two kids, his wife is here with him today. He was a former elected public official to the Prosser-Green County Commission and he's a political activist. And he has been involved not only the school board, but other public agencies in the county run a while in 2000 Judge, or in 2002 this really came to a head. And this goes to the heart of our theory that this termination is really just of a longstanding competition the Board to retaliate against Mr. Alderman for his political activities. And Mr. Bailey said that Norman wanted an apology. Well let me read to you what the Prosser-Green County School Board did on October 23, 2001 after on April 8, 2002 they had Mr. Alderman held out

of the Board meeting on hardoffs because he wanted to video tape the school board meeting. They actually had him arrested and tried to prosecute him because he wanted to video tape a public meeting. And you know what happened as a result of that lawsuit that we filed in Federal Court and I represented him on. On October 27, 2003 he actually received from the Proctorville County Board of Education and an individual member speaking as a Member, Admonition for violating his right pursuant to the First Amendment to the U.S. Constitution by attempting to prohibit him from recording April 8, 2003. He only wants an apology because they violated his rights, not like they did on the prior occasion. Now also you'll know that he has an electronic recorder and gave a hard copy recording that he wants to release public affairs, but everything that he did was privileged and protected by the First Amendment. And what actually protects this situation is that the freedom of public education in Proctorville County. The people that are supposed to be out there giving direction about the constitution and about ethics and about responsibility have now terminated Mr. Adkinson because he was engaging in the way believe that public education institutions are supposed to work look. We want people criticizing the government. Now he might have done it aggressively, he might have done it violently, he might have done it the way you and I wouldn't have. Maybe we wouldn't have shown the words that he said. But this this case he said words to expose what he believed was corruption and criminal behavior on board members that were not legitimately sitting on the Board is not just cause for termination. It's just cause to demonstrate that Mr. Adkinson is a concerned citizen. And certainly you don't require the use of the microphone to capture information as employment law existed because of what somebody said or what somebody did when it was privileged behavior as the

conduct of their transfer hearing. I just simply can't believe that the Board of Education has done this to Mr. Alderman based on what he said. And I wrote a letter to Dr. Law April 1st giving him information stating that what they are doing is violating his constitutional rights, but they never availed themselves to the opportunity to examine Mr. Alderman. And now, he would take an apology, but he wants to do what he has been doing for 30 years. He wants to be a teacher. And because of what he said in that country, then President-electing him that opportunity wouldn't be why we're here today.

JUDITH SPATOFORD: Okay. All right Mr. Halsey, who is your first witness?

MR. HALSEY: Dr. Law.

JUDITH SPATOFORD: Okay. (small talk)

MR. HALSEY: (small talk) is a CHURCH GOING?

JUDITH SPATOFORD: No. He's also where he is.

(Between Rounds)

WITNESSES,

DR. J. FREDRICK LAW

Having been first duly sworn to tell the truth, testified as follows.

DIRECT EXAMINATION

BY MR. HALSEY:

- Q. Dr. Law, your position at the school system?
- A. I am superintendent of schools.
- Q. And when did you first begin serving in that capacity?
- A. About two and a half, almost three years ago.
- Q. During your tenure as superintendent, could you tell me what you think

specifically one of the items that has been raised in the context of these proceedings. Mr. Alderman has been advised of the use of a grant for a golf team, right?

A. Yes.

Q. When was the first time that Mr. Alderman raised that issue?

A. I believe it was at a Board meeting in October.

Q. And during that Board meeting, did Mr. Alderman refer to you as a
university, is that a fact?

MR. BURKE: Objection, leading. He can see what Mr. Alderman referred to
has to do with getting money for sports. Your Honor.

MR. BAILEY: Sustain it.

JUDGE SHAFER: Okay to read leading.

Q. Could you describe how Mr. Alderman expressed his concerns over the
 golf money expenditure during that meeting?

A. To the best of my memory, Mr. Alderman appeared under our leave
(sanctity) and asked the Board, or indicated to the Board that he thought there might be
a problem with a twenty-five thousand dollar grant and presented some documents to the
Board indicating that this was the evidence that he had that something incorrect had
taken place. Essentially the Board heard him and took his information and directed me
and (sanctity) assistant superintendent and the treasurer to look into the matter.

Q. During Mr. Alderman's presentation to the Board, did he engage in any
behavior that you would characterize as insulting or abusive?

MR. BURKE: Objection, leading. How did he behave, what was his demeanor
but this is just Mr. Bailey testifying.

ALDERMAN: Could you explain?

Q: How was Mr. Alderman's demeanor?

A: He was very business like, very professional and brought the information and explained what the problems were, what his concerns were and stated the Board for that time.

Q: Did you remember the conversation regarding that Mr. Alderman had some possibly misuse of money?

A: Yes.

Q: Was Mr. Alderman disciplined, reprimanded or warned that he could not continue you in the way you were handling the Board's Council?

A: No.

Q: Was there any communication to Mr. Alderman that he/she was stepping on toes here or didn't have any business dealing with customers beyond his authority as manager or members of the Board?

MR. HUBBARD: Judge, that is still leading.

MR. DALLEY: I made in the opening statement that that was all in response to criticism of Mr. Alderman to limited the concerns. He raised the concerns back in October as a business like fashion and we are just putting in evidence that he, he wasn't disciplined for that.

MR. HUBBARD: I am not objecting to the category, I am objecting to the method of questioning the witness.

JUDGE SPENCER: Okay. We don't follow the rules of evidence here, but try to avoid leading as much as you can.

WITNESS: DEANNA KATHLEEN MURPHY
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Q Well, I didn't think I was leading. I asked him if he engaged in any adverse personal action?

A No, he brought up a concern. He expressed it in a very professional manner to the Board. He provided documents that he felt were evidence of his concerns and was very respectful. Mr. Alderman has the right to bring up concerns and objections in that manner.

Q Dr. Lee, could you explain a little bit about expectations that Board members engage in activities to remain effective?

A I'm not quite certain of your question.

Q Is there any the legislative-outlined steps that county Boards of Education should engage in to remain effective in its public institutions?

A I believe so. There are measures to indicate that Boards of Education must remain effective and must have good working relationships with the public and with their employees. And to maintain a standard that they are viewed as being above questions that they are doing the right thing for the students. Not exactly those words, I'm sure.

Q Are there certain activities prescribed by the legislature that you are aware of that Boards of Education are required to undertake to communicate with the public?

A They are. They are required to communicate with the public not only in an open manner in their board meetings, but also to be proactive and to get information to the public and to run, to seek information from the public to conversations and through the conversations, discourse in a board meeting.

Q How would you characterize Mr. Alderman's behavior during his boardroom hearing?

A: Pre-organized nature is my earlier testimony that Pre-arrange was something like that. Doing my best at a meeting involving an employee. Because of that case, the level of discussion, the things that people were called upon to do upon meeting. It was very casual and I think he was actually attempting to do that.

MR. HENRIC: Objection. That is in speculation regarding what or what not Mr. Alderman was attempting. He has no basis to testify about that.

JUDGE SPATACORE: I'll take that over consideration. You can finish your answer.

A: Essentially he was rude. He was challenging. He interrupted repeatedly. He essentially spent the allotted amount of time that he had to present a case as to why he should not be terminated, attacking members of the Board, myself, our business and Mr. Bailey. And essentially put on me now as to why he shouldn't be terminated.

Q: Is your feeling that you've had with Mr. Alderman since the well let me ask you. Have you had any meetings with Mr. Alderman since he finished hearing?

A: There was a follow-up meeting in my office with Mr. Irwin, Alvin Irwin my retirement and pension representative and Mr. Roger Traylor who is our Director of Federal Programs at which time I gave Mr. Alderman a letter indicating that I was going to recommend his termination.

Q: Did Mr. Alderman express an opinion one way or another about whether he accepted the behavior he exhibited in his conduct leading to inappropriate or appropriate?

A. Mr. [redacted] he was probably even more angry and more loud during this meeting. At one point as I was reading the letter to him and going through it point by point, he --

MR. BERRY: Judge, I don't know what the purpose of the testimony is. If the Board is trying to pollute the record with subsequent behavior, the basis of the employment is reduced as far as we're concerned. But the evidence limited the testimony purpose. But if they are trying to justify the termination it may only be based on the letter that they wrote to him which is only alleged conduct and speech that occurred at the teacher's hearing. So I don't know why they're bringing in subsequent stuff, but I just wouldn't make that note to the record.

JUDGE SPYTHAMER: What's the purpose, Mr. Berry?

MR. TALLEY: It's my understanding that the grievant takes the very end of course that was discussed during the grievor's opening statement that his long service with the Board, understanding of some mitigating (possibly), as terms of the decision that was made to terminate his employment. And the evidence that I'm attempting to present shows that Mr. Alderman has not acknowledged that what he did was wrong, while the vice, continues to hold the view that he is permitted to engage in behavior that I think any reasonable person would consider, unwise and the conduct that Mr. Alderman exhibited during the meeting in advance of the Board considering the superintendent's recommendation, the termination document itself as well as the appeal that was filed of the decision for the Board to terminate his employment all illustrate that here, that Mr. Alderman has no appreciation or will not acknowledge that this kind of behavior isn't

anxious without having negative effects on the Board. So I think we ought to be able to show that in response to that litigation argument.

JUDGE SPANAPOLIS: Let me ask Dr. Law. When you had this meeting with him before the investigation began, was there any consideration of possibly changing your mind about the recommendation? Was that the purpose of the meeting or was your mind pretty much made up?

A. My mind was pretty much made up at that point and we were there to present him with the letter and give him an opportunity to respond, but the letter was written.

JUDGE SPANAPOLIS: Well, I'd like to finish the answer he was giving, but I don't think we need to go further into this. We should keep a focus on the conduct he was sanctioned for. And he is acknowledging that he does not feel he did any certain thing wrong. He has made that very clear.

MR. TURNER: And Judge, I would like to point out too. It's not Mr. Alderman's responsibility under the grievance procedures and the Board policy rules and regulations to apologize. I mean if they think that there is some way that they could reach an agreement where Mr. Alderman concedes to reach if he acknowledges something, that's one thing. But it hasn't been any evidence put out that they made that offer to him prior to actually terminating.

JUDGE SPANAPOLIS: I understood. I understood the point you're trying to make and I will take that into consideration as part of your argument. That he is not responsible for what he did. Why don't you go ahead and finish the answer you were giving about the meeting.

A. Eventually, somewhere, the man came about eight or ten yards towards the fence where I indicated in his letter of transmittal that he had written prior to the hearing that he was going to expose the undocumented, he said you are a undocumented and that you are parasitic and there was no backing off of this language.

Q And you recall any other statements by Mr. Alderman of a threatening nature from that meeting?

A I think at one point he actually said I want the documentation for a visa now.

Q Dr. Law, taking into account Mr. Alderman's behavior during the January hearing and your opinion of the propriety of any consequences based on your dealings with Mr. Alderman, do you have an opinion as to whether or not continued student behavior of the sort he exhibited would have an impact on your ability to conduct its conduct in a efficient?

A I believe it would have a detrimental effect.

MR. HUSER-Objection. That's a speculation, I haven't heard any evidence of how it would have a detrimental effect. It might be his opinion, but they haven't introduced some evidence that it is going to be disruptive to the Board's functioning.

JUDGE SPALFORD: That's something that I can consider when I make my

MR. HUSER: Thank you Judge.

Q And could you explain why you believe that it would be detrimental?

A Well, as I indicated earlier, it's the responsibility of the Board to maintain good relations with the community. And we have a very small operating budget and a good portion of our budget comes through grants, comes through donations within the schools, through voluntary activities of parents and other community members to help

support the school. If the Board is viewed as "Young Men and Girls League" and that is reported and accepted often enough I certainly believe that that would have a very detrimental effect upon our ability to grow and say, would you please give us some money or would you please provide us with some help. And so I think it would have a very detrimental effect upon our ability to continue to function and provide the best education for the students in the county.

Q Does the Board have a pretty full definition the duties and responsibilities of the Board and what they are faced with in terms of (unavailable)?

A There are many, many responsibilities that the Board has that they have to given the business to approve all expenditures, they need to approve (unavailable) on personnel. They are constantly asked to make decisions by the public concerning programs and opportunities and problems that people have. They are constantly inundated with questions and requests and issues from the public about what's going on in the school system. Children are the number one focus of the community and people are interested in what's going on. So they have a very, very busy schedule and it's difficult to keep all of those things moving in a positive direction.

Q Dr. Low, given the agenda that you described for county Board of Education, is there any likelihood that the relevance of the fact behavior on the part of the employees would present a distraction from that?

A Oh, absolutely. I --

MR. BURR: I reserve my objection, Judge.

JUDGE SPENCER: Direct. Go ahead.

A. It actually would. If the Board is operating, if the example, if it were allowed to continue with one employee, what would be the consequences with other employees who wish to go to their principal or to their supervisor and tell them, I conducted an investigation even worse than that. If the kind of behavior was to continue, I would think it would probably spawn additional instances that would take up the time of the Board, the time of the representatives and the Board officer and principals as well. I mean it would happen with the students as they become aware that it's all right to yell your best, in their case in teacher, in classrooms. I think we'd have quite a few students spending a lot of time in halls.

MR. BAILEY: I think that's all I have.

JUDGE SPATAROLE: Okay, Mr. Bailey you can cross-examine.

MR. BAILEY: Thank you Judge.

CROSS-EXAMINATION

BY MR. BAILEY:

Q How long have you been a state superintendent, or superintendent of the Poudre Valley Local Board, sir?

A I think I said a little bit ago, almost three years.

Q And, that is Exhibit E Judge. You said that you've never read anything

like Mr. Alderman's motion, before?

A That's correct.

Q Were you on the Board or associated with the Board in 2002 when he was kicked out of the Board meeting in handcuffs?

A I was not part of the Poudre Valley Local Board system then.

Q Were you aware that that occurred?

A I have become aware of that, yes.

Q And when did you become aware of that?

A I believe probably during the first year of my tenure.

Q And you were aware that the Board apologized to Mr. Ackerman for that or what?

A Yes, yes.

Q You are aware that the Board paid a substantial amount in attorney's fees and compensatory damages to Mr. Ackerman?

A I believe that is correct.

Q You were aware that the Board had to formally apologize at a public meeting to Mr. Ackerman and put that in the minutes?

A I believe that is correct.

Q Have you reviewed any of these documents?

A I have reviewed documents, yes.

Q Did you review any of those documents before you terminated the 20 year employee of the school listed the ending retroactively as employee?

A I believe I reviewed them much earlier, not recently.

Q Okay, did that factor at all in your decision when you terminated that 20 year employee?

A The number one thing that caused my --

Q Did that become factor one at all?

MR. BAILLIE: Can the witness be prompted to answer the question

JUDGE SPATACORE: Let him answer the question.

MR. HUBBLE: It's a yes or no question. Yes or no?

JUDGE SPATACORE: He does not have to answer yes or no, just let him answer the question.

A: Especially when I made the decision to terminate Mr. Alderman I considered many things. I considered that meeting, my experience that I related to the past as well as the nature of his language during that meeting and considered many things.

Q: Did you review his personnel file?

A: I was aware of what was in that personnel file.

Q: Did you review his personnel file?

A: Not at that time...

Q: Okay, as pertain to making the decision to terminate Mr. Alderman, you had not reviewed his personnel file?

A: I was aware that he had had favorable evaluations throughout his career.

Q: And you were aware, well let me back up to my question. You didn't physically review his personnel file before you made the decision to terminate Mr. Alderman?

A: I had done that prior to that occurrence.

Q: Right, but after the transfer hearing, but prior to the determination you didn't ever look at his personnel file did you?

A: No I didn't.

Q: Did you talk to anybody about his personnel file?

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A. Yes.

Q. So you're the superintendent of the school board, you're making a decision to terminate a 20-year employee and prior to doing that you didn't even read his personnel file?

A. I was of the opinion that his personnel file had positive evaluations in it and there was nothing there that would have led to anything in the negative.

Q. So you were aware that at one point he was Teacher of the Year?

A. I believe that was, had been mentioned to me at one point.

Q. So at the time you made the termination you knew that he was Teacher of the Year?

A. That looked from such earlier named Teacher of the Year.

Q. And you know, although you didn't review the personnel file, you know that the performance evaluation was positive?

A. Yes.

Q. And you know that at one time even in the history of Mr. Alderman's teaching career he didn't have any allegations. Sexual allegations that he engaged in any kind of inappropriate conduct in the classroom?

A. There was nothing in his personnel file to my knowledge.

Q. So there was no indication that at any point in his official duties as an employee of the school board that he ever did anything wrong?

A. I don't believe there was any record of that.

Q. There is no indication that he ever threatened a student, correct?

A. That's correct.

Q There is no indication he had any kind of, that he physically assaulted a student, correct?

A That's correct.

Q There's no indication that he called a student a coward?

A No.

Q What if no indication that as an employer, as far as being as a teacher or whatever position he's held through the 30 years, because he's held different positions, how's he?

A It's the law.

Q What different positions has he held?

A He has been a teacher. He has worked for the Board of Education, an various capacities involving technology that has changed pretty /

Q He has been instrumental in working the Board with the technology improvements, how's he?

A Well, Adamson has many skills and he has many abilities that have been very helpful of course to the Board.

Q And there's no indication in that personnel file that he ever called another employee any kind of inappropriate name while he was at work?

A No sir.

Q So the named violations of your decision to terminate this 30 year employee as indicated on your letter comes from your opinion about his demeanor at the transfer hearing and the statements that you identified on your April 18, 2008 letter, correct?

A: That's correct.

Q: And it's based on, can you really justify that decision to terminate that employee based on that speech under the Progressive Discipline Policy, Dr. Law?

A: Yes sir.

Q: Let's go back then. You said that the reason may be because there might be some kind of adverse impact on the Board because children might start calling teachers cockroaches. Does Mr. Alderman's hearing and concern has been very well publicized what the Board has done to this 20 year employee, has there been a single incident of a student as a result of Mr. Alderman's speech calling a teacher a cockroach?

A: No, but there have been instances between students where they were using, calling names to one another and using the electronic means to do that.

Q: So like students were using the electronic devices to communicate?

A: Yes.

Q: With each other?

A: Yes.

Q: So more part of your objection is that he is raising a general resolution where people use text and send messages to each other?

MR. BALLEE: Objection.

A: No.

THE COURT: What's your objection?

MR. BALLEE: What's the objection?

MR. BALLEE: Well, the question was phrased as more your objection to this or that. I think the superintendent was submitting a question about whether or not there had

have any testimony outside of what was presented. But he didn't say it was part of his basis for disciplinary action.

MR. HUBER: I'll withdraw the question.

THE COURT: All right. He withdraws the question.

Q: You said that if he continued in that conduct, this speech, it could be evidence detrimental to the interests of the board, correct?

A: Yes.

Q: That was your testimony. Prior to terminating Mr. Alderman, you didn't do down and have that conversation with him, did you, and say would you stop that speech?

A: No I did not.

Q: Okay. So you never gave him an opportunity to deny, I understand if you assumed that what he didn't do was a lawful basis for termination, the school board acting through you never provides him, a 30-year employee of the school board, former teacher of the year and parent an opportunity to voluntarily come and discuss that conduct?

A: There was certainly display of a lot of evidence that he was not going to do so.

Q: My question is, did you provide him that you are doing with him and say Mr. Alderman, would you please stop this because of all these reasons you identified? Did you do that?

A: I did not.

Q: Did anybody do that?

A: Not to my knowledge.

Q Let's go back then. You told me all the things about the detrimental impact on the school board is that the limited financial budget that they have or something like that. I was really not clear about what impact Mr. Alderman's behavior was going to have, but fiscal responsibility is a school system that has a limited budget in context, right?

A That's correct.

Q So even the limit of a thousand dollars or fifteen dollars, can have a very substantial impact.

A That's correct.

Q And when Mr. Alderman complained to you about the golf course expenditures, which at that meeting you described him as very professional and business like, because he was, wasn't that?

A Yes.

Q And when he complained to you about that, how much money was he complaining to you about being lost or possibly understood?

A He was talking about twenty-five hundred dollars.

Q Twenty-five hundred dollars is a significant amount of money, isn't it?

A Yes sir.

Q And that was a legitimate concern of his right?

A That was his concern.

Q And then financial, the fiscal responsibility is critical for a school board in no agree, correct?

A Yes.

Q And what did you do with her complaint?

A We examined the documents that he provided, we examined when we had done. We then contacted Mr. Joe Proetto who is the--

Q The state superintendent's office?

A The state superintendent's office over finance. We asked if what we had done was appropriate or not because. We did this through an e-mail and we had also before, I won't say this because I'm not certain that we spoke to him on the phone about this but we did communicate with him by e-mail. We had an immediate response from him.

Q Okay, so as far as you know, the state is still investigating that expenditure?

A As far as I know, it's still with Mr. Proetto.

Q Did you or anybody on the Board make a determination that there was something improper about, or questionable about the expenditure of that money for the golf team?

A What we looked at as we looked through the documents, we saw on one hand one document that had in it, which was presented to us that was presented as evidence that there had been twenty-five thousand dollars over in one instance transfer of twenty-five thousand dollars was actually for another grant. It didn't have anything to do with the golf team. It was for a grant that had been provided to the school.

THE HALL:Y for the record is clear, you said twenty-five thousand dollars?

A Twenty-five hundred dollars. A twenty-five hundred dollar warrant was presented to the Board and that had nothing to do with the golf team. It had to do with a

standing like going, so there was some confusion that we were being paraded like when I came. So we looked at the documents, looking at what we had done, looking at the procedures that we supposed to take place and the manner which the money was disbursed to our office. We felt that we were probably doing the right thing. Not having any response from Mr. Perkins' office, he appeared not to be very concerned.

Q And you would agree that the concern that Mr. Addelman submitted to the Board as the formal complaint that he filed was a legitimate act of public criticism or concern?

A He certainly had a right to make those.

Q Do you know whether or not the state is investigating this golf expenditure?

A I have no idea if the state is investigating this.

Q And wouldn't that responsibility or rather demand hurt the Board's reputation if it was found to cover?

A Absolutely.

Q And wouldn't that hurt the effectiveness of the Board?

A It certainly would and it would also hurt the effectiveness of the Board if it was exposed and it was wrong.

Q And from every standpoint Mr. Addelman is?

A There was a second occurrence where he came to the Board and provided the same information initially.

Q All right.

A And then at the second hearing.

Q So conduct occurred he said to the board something that you intend is in subject of legitimate concerns or concerns part of a school board employee or member of the community?

A Yes. That's correct.

Q All right, and apparently the board even thought it was a matter of legitimate concern because they referred it to the State Superintendent is that correct?

You believe that it was a matter of public concern because you referred those documents?

A I believe so.

Q So you don't have any problems with Mr. Alderson talking about that as much as he wants?

A Again, he has the right to complain or to express concerns.

Q You of course are familiar with school board policies, correct?

A Yes sir.

Q And you are familiar with the nature of progressive discipline in the school board system, correct? Now I want to ask you about some things. I don't want my name because I don't want to violate anybody's privacy. But over the last three, what did you hear there, and a half years that you were State Superintendent?

A Almost three years.

Q Almost three years. How many people have you recommended termination for?

A I don't know that there have been any recommendations for termination.

Q Well just to give you and Norman and the judge notice of some of the things that people have been disciplined for. Do you have any recollection over the past three years of anybody that let's say, you've suspended?

A Yes.

Q Okay. How many, well let's break it down into categories. Let's do suspension without pay? That's without disciplinary action. And I don't care the how long, one day or 30 days. How many people have you suspended without pay in the last three years?

A Depends to my mind probably two, three counting Mr. Alderman.

Q What were the other two suspended for?

A On one occasion there was an incident where an employee had brought a device into a classroom to teach students and created a great deal of trouble in the building (laughed) the students to have to evacuate the building through a fire drill.

Q Okay. What was the device they brought in?

A It was just a handheld smoking device that the students had made in the shop.

Q Okay, and what was the other person suspended for?

A The other situation involved an individual who was involved in a situation of inappropriate behavior with a student, sexual behavior with a student.

Q And it was inappropriate sexual behavior?

A Yes.

Q With a student?

A With a teacher without a student.

Q Okay and was this a male or female teacher?

A This was a male teacher.

Q And the nature of this inappropriate sexual behavior?

A Was female.

Q How old was the female?

A Unknown, she was obvious.

Q And how old was the male?

A I'm going to say probably 33.

Q And did you do an investigation into that inappropriate sexual conduct?

A Yes.

Q And what was your determination?

A That it occurred.

Q And what was the punishment the teacher received?

A He was suspended pending a hearing before the Board for termination.

Q And what happened?

A The individual performed the rules and regulations to that hearing.

Q Any other disciplinary actions that you've brought that you can recall in the past three years?

A The suspension of an employee, no.

Q How about any other kind of disciplinary action?

A There have been situations where employees have been brought in and had a lecture or a discussion as to the nature of their behavior.

Q Well, in terms of the 11 situations as to the nature of those behaviors, just give me some examples of what kind of conduct you brought people in and had a discussion with them over?

A Inappropriate conduct in front of students.

Q Like what?

A Just being openly affectionate towards each other.

Q What do you mean, between teacher and student?

A Between teachers, between adults.

Q What other kind of conduct?

A A similar type of a situation involving employees who were at a conference and that was not behaving in a manner that was really not deemed to be appropriate and we had removed them.

Q What was the nature of the behavior?

A In a meeting, hand holding, sitting on each other's laps, kissing.

Q What other kind of behavior has caused you to bring disciplinary actions where you bring somebody in to talk to them about it?

A We had a situation involving a teacher that did so very in a classroom.

Q What else?

A And that was a suspension without pay. That's all from small at this age.

Q As to each of those behaviors that you identified where, I am not talking about the two suspensions, but in each of the instances you identified about inappropriate conduct in front of students or being openly affectionate, you brought those people in and had a talk with them.

A. Yes.

Q. Told them that what they were doing was wrong.

A. Yes.

Q. And told them that it had to stop.

A. Yes.

Q. And some of this conduct that you identified actually occurred in the school.

A. When you talk about the smoking stream, yes.

Q. And also about the inappropriate conduct in front of students between teachers happened in the school. And the teacher falling asleep happened in school, correct? All the behavior that you complained with Mr. [redacted] happened in the context of a school board meeting, correct?

A. Yes, it was a public meeting.

Q. Outside of the school board and outside of the school as a teacher?

A. Yes.

Q. So you honestly do not believe that that what happened or how he behaved at that meeting has any impact on his teaching ability in school?

A. Oh, I certainly do.

Q. Do you think that how he behaved at that meeting somehow means that he is not going to be able to perform his duties in school?

A. If somebody's acting in behavior in that manner with their superior and their peers, when they're working with a student who is being counseled as being substandard to them, that kind of inappropriate they go on to see, what kind of classroom

are they going to leave? Are they going to be bullying these students? Are they going to be hostile and aggressive?

Q After Mr. Alderman's transfer, having none of that occurred at the school?

A Mr. Alderman was not working with students in a classroom.

Q You have personally observed Mr. Alderman interacting with students, correct?

A Yes, on one occasion outside and the board office.

Q And he was always appropriate with the students?

A Yes, I've already indicated that.

Q And always professional?

A Yes.

Q And although you didn't remove his personnel file and you say you don't know how he acted in the classroom, he taught in the classroom for five years, correct?

A Yes.

Q And his year told, there's nothing in the personnel file that is critical of his job as a teacher?

A That's correct.

Q In respect to the comments that you identified in your letter as the basis for the termination, specifically in respect to Mr. Alderman's comments concerning salary?

A Would you say that again?

Q Specifically Mr. Adelman's Education-Planning Board Member
Committee as an advisor. Okay that was one of the concerns that you identified as your
April 10, 2008 letter, correct?

A Yes.

Q And you understood that the reason that he raised that issue was because
he was concerned that Mr. Grimes was not actually living when he said he was living?

A My understanding was that his concern was that he was an advisor.

Q Okay, you don't recollect that concern had anything to do with
residency?

A I don't remember at this time whether or not he brought up that residency
issue.

Q Do you understand now today that that was the purpose for--

A That is what I've been told.

Q All right. And have you reviewed the transcript of the transfer hearing, or
reviewed the termination hearing?

A I have.

Q And in that transcript does Mr. Adelman not mention the fact that his
concern was that the board member was not actually living when they said they were
living?

A It may. I just don't recall that.

Q And, has anyone ever investigated whether or not the claimed residency of
Mr. Grimes is actually where he lives?

A That's not something that I would be involved in. I'm not aware of it.

Q Well if you've got someone other than a not legitimately qualified to sit on the Board wouldn't that be a concern of yours as the President of the Board?

A Again, that's not something that's within my jurisdiction. I work for the Board, not they for me.

Q Well you're the superintendent of the Board, correct?

A Yes.

Q Wouldn't it be a concern of yours if one of the board members was not legitimately sitting on the Board?

A It would be a concern.

Q And wouldn't that not, also, properly, well if it's not a legitimate board member, wouldn't that not also properly every action that the Board took?

A No, I don't think that occurs in that manner. It would be a concern that that person was, yes it would be a concern.

Q And if that person was not legitimately sitting on the Board and was voting and participating in Board activity, that would call into question the integrity of the actions that the Board took?

A Again, I like to leave my evidence testimony as to the fact that Mr. Gorman is an witness, or a living in the region--

Q Well my question to you is, if there is a board member that's not legitimately qualified to sit, wouldn't that then cast into question the integrity of the actions that the Board took, because that person wasn't legally entitled to sit?

A I would answer, yes.

Q Yes. And you were aware that Mr. Alderman's comments said that he wasn't being violent, he said he was being thorough he didn't fulfill the mandatory requirement and requests that extended to it on the Board?

A That's in the transcript.

Q And you are aware of that?

A I'm aware of that, yes, now.

Q Well, what did you hear because I mean that that was his comment?

A Well, as I said I don't remember, I didn't remember that that was there in the transcript until you pointed it out to me that it is.

Q But you were aware that the purpose of Mr. Alderman's comments was to question whether or not that was his tendency?

A That's what it says.

Q Okay, so you don't have any concern in doubt that?

A That's what it says.

Q And you agreed that that could be a concern?

A Yes.

Q And you know I don't expect to look into that?

A No.

Q Do you also agree that as West Virginia employees are to maintain, demonstrate a responsible citizenship by maintaining a high standard of conduct, self-control and noncontroversial behavior correct?

A Yes.

Q And you're aware that immorality in West Virginia is to be defined in such a way as not conformity with accepted principles of right and wrong behavior contrary to the moral code of the community, stated, especially not in conformity with the acceptable standards of proper school behavior. Have you ever heard that definition of immorality?

A I very often read that at some point and time.

Q And under that definition wouldn't adultery then be immoral?

A I think that is a very broad statement and when you talk about the moral community's morals, I am not certain. In some communities where that would be accepted and other communities might not.

Q Well certainly it would be a legitimate concern that immorality is engaging in adultery, that is immoral behavior, correct?

A I think that would be an argument.

Q And so, what Mr. Alderman did as you just admitted in regard to questioning either in regard to the morality or in regard to moral behavior was a legitimate concern.

A It was a legitimate concern, however it was never brought up in my knowledge prior to that meeting.

Q It was never brought up prior to the meeting hearing?

A I believe that is correct. I don't believe that, you know, he ever brought that to the Board or a committee prior to that meeting hearing.

Q So after the transfer hearing, but before the termination, because you indicated that that was a legitimate concern, did you ever investigate whether or not he was an addict?

A No I did not.

Q And you never ever investigated the residency issue I think as you already testified?

A No.

Q Are you planning on doing that?

A Mr. Council is our long-term member of the Board.

Q Why?

A We didn't get enough votes.

Q Mr. Law, let me just make sure that the record is absolutely clear about the basis of this situation. Everything that just went on is based for the termination is on the April 16, 2006 board, correct?

A That's correct.

Q And you certainly recognize that Mr. Alderman has a First Amendment right in various public affairs?

A Well absolutely.

Q And the Board is a public body and actions of public officials.

A That's true, but Mr. Alderman has no written concerns come out through channels and went and ran away to the Board.

Q On multiple occasions has he been told?

A On several occasions.

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Q And you are aware even that is, actually, through a little action on his own and filed a lawsuit that occasionally occurred at least one school board member in the past?

A Yes.

MR. HUBER: Judge, can I have a couple of minutes to talk to Monroé?

JUDGE SPATACORE: Sure. We're off the record.

MR. HUBER: Thanks.

(SPATACORE's brief discussion on what had off the record.)

JUDGE SPATACORE: Okay, we're back on the record.

Q There some more questions for you. They should be fairly brief, like I said. I want to make sure that the record is absolutely clear about several things. All right. Number one, and I think you've already answered this. All of the contacts that you completed occurred in the context of a hearing where the school board was questioning Mr. Adelman?

A I think in the letter it also indicates that he prior to the meeting announced that he was going to expose the discrimination and that he encouraged people to come out and express their

Q Is it accurate to understand that letter was going to be a public hearing for his lawsuit and characterized the Board as a fighter that you didn't consider too cowardly?

A That's putting it very mildly.

Q But he didn't use any allusion to the characterization of the Board?

A I don't believe he did.

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Q And didn't transfer the report on writing, or verbally give to the transfer?

hearing?

A With physical contact?

Q Yes.

A No.

Q And he engaged in no physical contact prior to the transfer hearing

concerning the statements that he made or his actions in respect to Board activities?

A I am not certain that could be characterized as an criminal.

Q What would you characterize as criminal?

A I think there's a possibility that of habeas or clerical being involved.

Q So you're saying there is such thing as habeas searched statements that are

criminal?

A That's my understanding.

Q Okay, so people can be put in jail for what they say?

A They can be sent for it. Not in jail, no.

Q So that the answer is there was no criminal behavior on the part of Mr.

Alderman?

A No.

Q All right. And there is respect to his conduct at the Board, or the transfer

hearing. The transfer you know was something that Mr. Alderman didn't want to do.

A Say that again.

Q Mr. Alderman didn't want to be transferred, right?

A He asked for a hearing.

Q Right, obviously he didn't want to be. And Mr. Alderman was upset about the matter?

A I would assume.

Q And during that meeting, you never called Mr. Alderman out of order, did you?

A It's not my place.

Q Well, did anybody on the board call Mr. Alderman out of order?

A Mr. Wham several times asked him to stay on point, to --

Q Did he call him out of order?

MRS. RALPH: One is he permitted to finish his answers?

JUDGE SPALDING: Let him finish his answers.

Q Did anybody call him out of order?

A He did not, Mr. Wham on several occasions attempted to keep him on track as to why he was there. He did not call him out of order.

Q Nobody ever ruled Mr. Alderman out of order?

A No.

Q Nobody ever tried to make Mr. Alderman leave the hearing based on his conduct?

A No.

Q And verbally for the entire time during the hearing he was treated as that of just another like him?

A Essentially.

Q You are, of course, aware of the school board policies concerning the responsibility of the Board to assist personnel in conducting and performing their job duties, correct?

A Yes.

Q In fact, the stated policy is that it shall be the policy of the Board to assist its personnel in every way possible to adjust to their positions and to perform their duty satisfactorily?

A Yes.

Q Tell me specifically now why we already agreed that the Commission had nothing to do with how Herman performed his duties as a teacher, correct?

A No.

Q Because according to the personnel file and according to the 20 years of personnel evaluations, he was a satisfactorily performed his job duties, correct?

A He had satisfactory evaluations.

Q And so there's no question as to what his job duties that he performed were satisfactorily?

A Yes.

Q Now as to what is the balance of what he did or speak that you complained of. Tell me everything that you did or chose to assert his Alderman as exercising this inappropriate behavior?

A (inaudible)

Q I have no further questions.

RECEIVED FOR: Mr. Bailey, my follow-up?

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EXHIBIT

BY MR. BAILEY:

Q On June 16, Mr. Fisher asked you about a settlement agreement that was entered into some time ago between Mr. Alderman and the Board. To be clear about that, you haven't with the Frederick County Board of Education at that time, correct?

A I was not part of the Board of Education. I came on right at the very end to which the statement was made at a meeting.

Q Was this something that a Court ordered the Board of Education to do?

A I believe so.

Q Did you understand that this was a settlement at a lawsuit or something that --

A I believe it was the settlement of a lawsuit that this was language that had been presented by the insurance carrier in order to settle the lawsuit.

Q So you did not have a chance to personally observe Mr. Alderman's behavior at the meeting in question when this lawsuit?

A No I was not there when he was taken from the meeting.

Q Did you have any role in negotiating the settlement of the lawsuit?

A No I did not.

Q Do you know what changes were proposed in the decision by the Board of Risk and Insurance Management to settle the lawsuit?

A No.

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Q Just to be clear, Mr. Miller asked you about this issue of seating on the part of Mr. Gorman. I read that, do you recall at any time during the transfer hearing where Mr. Alderman articulated his objection to Mr. Gorman sitting on the Board as based on religion?

A I don't remember that.

Q Now the record will speak for itself that I think at one point the question said Mr. Gorman over there has no authority to sit on this table, at this table because he is an educator. Do you recall that?

A I believe that (inaudible)

Q Are you aware of any statutory requirement that calls for the removal of a board member because they are an educator?

A No, I'm not aware of any.

Q Do you understand that evidence may be an issue?

A Yes.

Q Do you take issue with Mr. Alderman's statement to state the qualifications to a board member based on education?

A No.

Q Do you read the statement during the transfer hearing and I am quoting her:

MR. CRUEL: What page are you quoting?

MR. HANLEY: Page 13.

Q "Are you telling me Mr. Vance you don't care. You let a man go who has had sex with a student and you aren't going to go around and let an educator who did that

something like: 'What did I do just pulled another woman. May you think about that. People are mad about this. I'm mad about this and I want that man off this table and I don't want him voting.' Do you recall Mr. Alderman following that up or trying that in with a evidence argument?

A. No I do not.

Q. Mr. Hester asked you if you did anything to attempt to, well let me ask you this. Mr. Vance, I think you testified on direct examination, attempted on a couple of occasions and again the transfer hearing will have this certified that have the details of both the copy of it and video version of that transfer hearing. Did Mr. Alderman meet in a positive way to Mr. Vance's attempt to retract that?

A. He, each time this occurred although Mr. Alderman interrupted the people he was questioning repeatedly, whenever Mr. Vance would make a statement to the fact that you're not talking about the subject you are supposed to be talking about, it would, the ineffectiveness of the (inaudible) he was more aggressive, more agitated.

Q. Do you have an opinion of whether or not explaining, an attempt to redirect to talking out of order, would that have had any material difference to the outcome?

MR. HESTER: Urgency, speculation.

JUDGE SPATTORE: The objection is noted. Go ahead and answer.

A. Go ahead and answer?

JUDGE SPATTORE: Yes.

A. Okay. In my opinion, my might have relationship with another situation where the police were taking Mr. Alderman out of the meeting. He was, so I understand, was he was reduced to just because more options.

Q. Now Mr. Butler asked whether or not you attempted to counsel Mr. Alderman, did it was wrong to be involved in the Board members, to the Superintendent, to the Treasurer and that he should stop that practice. Could you explain to the hearing examiner why you decided to proceed with termination and send an attempt of that sort?

A. Essentially two reasons. One, the nature of the behavior of Mr. Alderman was such that I did not feel that an employee who behaved in such manner towards his employer was someone who would be able to conduct himself in a manner that would be appropriate in the future. Secondly, I didn't believe based on the e-mail or the characterizing posting that was made for-day following the Board where he essentially was abusive and bawling about what occurred at the Board meeting, here he --

MR. BUTLER: Objective, that's (possible) what did he say, phoning and bawling. Objective, that's to the characterization of Mr. Alderman's behavior and there is no evidence to support any of that type of characterization.

JUDGE SPATAFORO: Is that one of the exhibits?

MR. BUTLER: No.

JUDGE SPATAFORO: We'll provide the record for part a moment.

(WHEREUPON a brief discussion was had off the record.)

JUDGE SPATAFORO: Okay, we're back on the record.

Q Mr. Bailey asked you all, in fact, convincing evidence number one that you said that to reach your determination that there was little likelihood that Mr. Addonizio would change his ways?

A Yes sir.

Q And when you saw little likelihood to change his ways, you stated at that time that he was going to continue to criticize the Board?

A And probably do in his next comment.

Q So what you were afraid that he was going to do is the future was continue to criticize the Board in the next or similar manner that he had done in the past?

A As he had done at the 10th meeting.

Q And Mr. Addonizio in his communication has criticized the Board on many occasions, correct?

A That is correct.

Q And with the exception of the way he did it at the meeting in question, in all these other occasions that he has criticized the Board, you didn't have any problem with that?

A In the three years that I've been there, I have no knowledge of just he was going to point to my coming.

Q So besides there was that you've been there, you've had no problems with him he criticized the Board with the exception of this one meeting?

A That's correct.

Q And that the three years that you've been there, Mr. Adelman has been very active in the political community, in the local community concerning school board problems?

A Yes.

Q And as you have that three-year experience with Mr. Adelman, You have one experience in that where you disagree with him he did it, but in respect to the other three years of your experience, you have no disagreement with what he's done?

A He has sought to bring (inaudible).

Q And in this Respondent's Exhibit (B) the evidence that you need to support the motion that Mr. Adelman couldn't have changed his behavior if he was appropriately motivated or given the opportunity to do so. This exhibit in hand, he doesn't use any more words in the exhibit does he?

A No.

Q He doesn't, I don't even think will anybody a third in this district?

A He is.

Q And, I returned to you that he doesn't use the term overgrowth in this letter, would you be able to dispute that?

A I don't remember that he did.

Q And if I present to you that he doesn't use the word solution in the resolution, would you be able to dispute that?

A I don't remember that either.

Q And what was the date of that email, I can't tell?

A It's March 23rd.

Q So from this e-mail, when he doesn't run, doesn't call anybody in, doesn't call doesn't use the word where that you extrapolate that something would have had an effect on Mr. Adams in his future?

A That's correct.

Q You'll have to forgive my ignorance about the different disciplinary measures that the school board may impose, but do they have something where you can put an employee on a probationary period or a suspension, where they are suspended for a period of time?

A I think so.

Q And they also have, like you said, the verbal reprimands?

A Yes.

Q You probably have informal meetings where you can talk to people and just say hey we just are worried about this?

A Yes.

Q It doesn't actually get in the record?

A Yes.

Q You have suspensions with pay and without pay?

A Yes.

Q And you have warnings? Oral warnings?

A Yes.

Q You can put people on improvement plans?

A Right.

Q And you've already answered that but none of that was offered to Mr. Alderman, correct?

A That's correct.

MR. BURDE: Maybe Mr. Bailey and I can do that to expedite things, but I just want to get some minutes in and if we could negotiate to what they are. I'm not going to negotiate them about it. I should have done it while we were negotiating, but I want to get in my letter that I spoke here on the PP and I don't know if you have any objection to that or not.

MR. BAILEY: No objection.

JUDGE SHATAPORLE: I already marked that one.

MR. BURDE: And then I have the school board minutes, I guess the closest entry is 176 from the April 8, 1982 meeting where Mr. Alderman was listed on it, handwritten at the direction of the Board.

MR. BAILEY: That would make direction of the Board. I think the State Police did this themselves, I don't know what happened.

MR. BURDE: Well, those are the minutes of the Board meeting. That's all I want to introduce.

JUDGE SHATAPORLE: Have you seen that?

MR. BAILEY: Yes, I've seen them. I don't have any objections to them except for relevance.

MR. BURDE: Exhibit C? Does Judge?

JUDGE SHATAPORLE: One year's Exhibit C?

MR. EIDER: And then Judge, there is the minutes of the meeting where the Frederick County School Board officially apologized to Mr. Alderman for violating his constitutional rights and rights pursuant to the governmental proceedings act.

MR. BALEY: I have no objection to that so long as we introduce the settlement agreement that produced that apology.

MR. EIDER: Yeah, I've got that. Also Judge, in part of the settlement agreement, the entire Board was forced to undergo Open Governmental Proceedings Act training and the State Attorney demanded it and this was signed about all the Board members that were present at that training and the public notice that they were required to post as a result of the litigation that Mr. Alderman brought. So that would be that I guess. That's all.

JUDGE SCHLAFORE: Are you familiar with that?

MR. BALEY: Yes.

JUDGE SCHLAFORE: That will be Counselor's Exhibit 14.

MR. EIDER: And then the Judge is for actual complaint that Mr. Alderman filed against Dr. Law and John Ivin concerning possibly the changing of endorsement of public funds.

MR. BALEY: With the Transcribing Attorney.

MR. EIDER: Oh, this was filed with the Prosecuting Attorney? I withdrew that Judge. It wasn't actually submitted to Dr. Law. And then I have the settlement documents from the litigation. Although it is not a signed copy, are you going to dispute that that was the resolution. That's what you guys produced to us.

MR. BALEY: That's fine.

MR. HUBBARD: Judge, it's not a signed copy. Eugene I signed the wrong thing.

But that's actually the retirement that was entered into and there

JUDGE SPATACORE: And that's Eugene's Exhibit P2.

MR. HUBBARD: And then we as, we would actually be the signatory. Do you have an objection to that?

MR. BAILEY: Is this the exact thing that is in the Board minutes?

MR. ALDER: Yes it just something that was prepared by their counsel.

JUDGE SPATACORE: If it's already in the Board minutes, that would probably be the best.

MR. HUBBARD: Okay.

JUDGE SPATACORE: I think the best evidence of exactly what was said.

MR. HUBBARD: I agree Judge, Eugene. I think that is all the exhibits I have.

JUDGE SPATACORE: Any objections? Counselor's Exhibits 1 through 6, or is it five. I think they only have five. Any objections other than relevance?

MR. BAILEY: Yes, my understanding is that it is generally offered to demonstrate [inaudible] retaliation for the retirement agreement, retaliation for the lawsuit. Is that what this is being offered for?

MR. HUBBARD: Well, the retirement agreement was the genesis of the Board's ongoing composition and determination of Mr. Alderman's retirement.

JUDGE SPATACORE: Remotely he's claiming retaliation. That's how I take it.

MR. BAILEY: No objection that that is the purpose.

JUDGE SPATACORE: All right. These three documents are now entered in evidence.

MR. HUBER: That's all the questions I have.

JUDGE SPATAFORO: Any further questions.

MR. BARTY: Just a couple, following. Following on the counseling, reprimands and plans for improvement.

REEXAMINE

Q It's my understanding that these plans of improvement are for workers who are in confidence to perform their job and at a chance for them to acquire the skills and improve their performance of their duties. Is that fair to say?

A Yes, and they would generally include some opportunities for that individual to receive training on that lack of skills.

Q And in terms of counseling, reprimands and written warnings, are those generally effective in extinguish inappropriate behavior if the employee doesn't acknowledge anything is wrong?

MR. HUBER: Objection, leading, speculation.

MR. BARTY: I don't think it's leading. I just asked the question, is it generally effective.

JUDGE SPATAFORO: He can give his opinion.

A Your question was?

Q Is it effective in administering warnings, doing a written reprimand and doing something less in terms of punishment, is that effective in extinguishing the behavior that you're worried about if the employee won't even acknowledge that they are doing anything wrong?

A It's not effective if the employer is not admitting that there's something wrong, corrected his behavior, they are not going to change what they're doing.

MR. DALRY: I think that's all I have.

JUDGE SPATAFORD: Anything further?

CHIEF EXAMINATION

Q What's your degree in?

A My degree is in education.

Q Is it in psychology?

A No.

Q And you said that those other disciplinary actions short of termination aren't effective in getting people to change their behavior. If they aren't about the rules, they still are wrong?

A What I said was that if someone is unwilling to admit that they did something wrong, then asking them to do it differently would be going against their will as far as what they had done is right or wrong.

Q And I was looking at your letter recommending termination and I didn't see anywhere where you offered Mr. Alderman the opportunity to admit that what he had done was wrong.

A I don't think Mr. Alderman has admitted that he did something wrong.

Q Well did you ever have a meeting with him with other people present and ask him whether or not he felt like he had done something wrong and have a discussion about it?

A No.

MR. HUBB: No further questions.

JUDGE SPATSFORD: Mr. Bailey, okay, when your next witness?

MR. BAILEY: Mr. Vance.

JUDGE SPATSFORD: Okay.

(Witness Sworn)

WHELFORD:

KENNETH VANCE

Having been first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

- Q Mr. Vance, would you state your name for the record please?
- A Kenneth Eugene Vance.
- Q And what's your current position with the Foothill County Board?
- A President of the Foothill County Board of Education.
- Q And could you outline your service as a Board member?
- A I have been elected Board for eight years, one term was (inaudible) a

normal had to sit out, but unless I'm wrong, this is starting my ninth year.

- Q And how long have you served as president of the Board?
- A For, that is starting the second two years.
- Q And before you were a Board member, did you have another life or an education?

- A As principal of Foothill County High School for 12 years (inaudible).

I started in 1956 and then I went back to Foothill High School from 1963 to 70.

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Q Mr. Wynn, let me direct your attention to the transfer hearing that was conducted for Mr. Alderman. Did you provide at that meeting?

A Yes, I did.

Q At any time during the meeting did you interact with Mr. Alderman and communicate with him about how he was conducting himself?

A Yes, quite a few times I asked Mr. Alderman to stay on track as to, he would get on something that didn't pertain to the transfer hearing. He would get on something that and I asked him at least three times to stay on track as what we were doing.

Q And how would Mr. Alderman react? Did he respond to your direction?

A No. He just kept on doing what he wanted to do. What he had set out to do that night.

MR. BURR: Let me object to that. What let you not to do that night. It is purely prejudicial, self-serving testimony and hearsay evidence here in the record. The only thing Mr. Alderman set out to do that night was figure out why he was terminated.

Whether or not the Board had legitimate reason to do it.

THE COURT: Okay, I'll note your objection.

Q How Mr. Wynn, would there that evening?

A Yes.

Q Did she have anything to do with the circumstances or the decision to transfer Mr. Alderman that evening?

A Not that I know of, no.

Q What was your understanding of why she was there?

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A. So we get doing recording of the meeting which the time for every hearing or anything, the time record it.

Q. Do you recall any statements that Mr. Alderman made about his, from that meeting?

A. Yes, he then made some statement that she was a thief and called her some other things.

MR. MURPHY: Your Honor, if he wants to testify as to what he recalls, but the testimony speaks for itself as to what was said and here's a transcript of it. There's never a witness of it.

MR. BALLEW: While I don't intend to spend a great deal of time on it, I was trying to lay a little foundation.

JUDGE SPATACORE: Okay, go ahead.

Q. Do you consider collection of Mr. Irvin pertinent to the statement we've set forth for Mr. Alderman's recollection?

A. I think it's fair that it should be there, it had nothing to do with her transfer hearing. What he was saying is what he said about her.

Q. Could you explain to the JLL what your role was in school board - Alderman's?

A. Well I think that the school board has to look at every item and everything that comes before the board and we have to have control and conduct the meetings in a manner that we are interested. And the same is with the superintendent. He's in control of the whole system. So I think we need to be in control in meetings and of the situation that exists before us. And it tends to be an orderly type affair so that there's no

international and I think if we would sit and listen and let everybody just you know, say what they really want to do about people on the Board, we wouldn't have any effectiveness. We might as well give it up.

Q Now did you at any point call Mr. Alderman out of order, basically say, indicate to him what you're saying is out of order?

A I asked him to, if he would stop or track what he was doing that night, of what he was doing for, for his hearing. I don't know whether I actually said that, you know told him he was out of order. I just mentioned a couple of times that he was was coming out and I didn't think there was too much reason to even say, you're out of order. He had said before he was going to do what he wanted to do.

Q Now did Mr. Alderman at an earlier meeting raise concerns about the golf team money expenditure?

A Yeah at one of the earlier meetings he brought us some information saying that the money had not been spent properly or how it had been spent, that it had been wrong and we took the information he gave us and listened to what he said and then, as we do with everything, we let the representative and his, his, look at it and then come back and tell us what to do.

Q Was there any disciplinary action taken in response to Mr. Alderman's criticism only on?

A No there's never been any.

Q Why is that?

A Well, he really wasn't out of line. He was just, I feel that what he does as a dad, it's helpful to us because then we check and make sure that things are going right.

But no, it isn't that that he was not of order as far as what he said or anything like that. He has a law with in being that before the Board or any other Board that.

MR. BALLEW: I think that is all I have on Cross of Mr. Vernon.

RECALL: SPITALFORD. Okay.

CROSS EXAMINATION

BY MR. BALLEW:

Q Ma' Yancy, you were principal where in the past Mr. Alderman taught, correct?

A Yes.

Q And what school was that, where Mr. Alderman taught where you were principal?

A Frederick County High School.

Q Do you remember what year that was? I think your memory I don't know.

A I retired in 1996 so it was about probably 13-14 years from that time.

Q And how long were you principal?

A 15 years.

Q And how long was Norman there while you were principal?

A Probably 13, 14 years.

Q And during that 13 or 14 years he taught in a classroom setting?

A Yes.

Q And at some point he became a Certified Clinical Instructor for students, correct? Was that under your tenure or not?

A: He might have been certified, but he wasn't doing the work.

Q: And currently, do you know what his current job is? Or was before he was fired?

A: Well, yes, he was working as a benchmark estimator and he also was working with, he had been through quite a bit down here with the computer related personnel.

Q: Right, technology.

A: Technology type stuff.

Q: And Norman did a real good job working with the computers and trying to assist in the development of technology that would help the educational environment, is that as you know?

A: As far as I know, yes.

Q: And as a benchmark estimator as far as you know he did a real good job with that?

A: I cannot answer that.

Q: Okay, well you don't know any reason is despite that if I represented that the personnel file indicated that he was fired (inaudible)

A: No.

Q: And during your 11 years that you worked with Norman while you were his principal, he did a few job as estimator, did he not?

A: Well, probably if you looked at all his evaluations, it would get

Q And during that 14 years that you had direct supervisory responsibility of Mr. Alderman he never had anything inappropriate in terms of safety concerns with students or anything like that?

A About every day I locked up for withdrawing somebody in the office for something.

Q Disciplining students?

A Discipline.

Q But in respect to his behavior as a teacher or the personnel file incident, he was never disciplined in any way? At least he was a fairly disciplinarian. Now did you participate in any discussions concerning what the Board was going to do in respect to his employment after or on a result of the transfer hearing?

A Never talk me that again.

Q When the school board and Dr. Lane were making the determination to terminate the employee of 20 years of the school board that has never been disciplined before did you participate in any of those discussions?

A No, at least with the superintendent.

Q Do you know whether or not any school board members participated in this discussion?

A I do not, I cannot answer for them.

Q And you're familiar with the notion of progressive discipline concept?

A Yes.

Q And despite the fact that you have personal knowledge that the student has a 20+ year tenure at the school system and never been disciplined, will let me

back up a second. You obviously and some staff involved conversations that as a way what Norman does is helpful to the Board because it kind of keeps you honest, doesn't it?

A: Yes it could be.

Q: And what you're disputing is what he did in his conduct on that one moment in time at the board meeting?

A: Yes.

Q: And you dealt with Mr. Alderman for years in respect to his local activities in the community, correct?

A: Pretty much at the school.

Q: Okay with the school board, I mean for two terms dealing with you guys for years hasn't he?

A: Yes.

Q: And during those years of experience with Mr. Alderman where he has been a political activist, engaging in behavior that you were uncomfortable or helpful, there has been no problems with Mr. Alderman?

A: Board should be helpful.

Q: Okay. So in those years that you've been in the community and as a school board member or school board employee, witnessing and sometimes being the subject of Mr. Alderman's activities, there was no problem in terms of how he did it?

A: As far as (crossing) him, yes, there was no problem.

Q: And you voted in favor of the resolution to reelect Mr. Alderman, correct?

A: Yes I did.

Q And when you voted in favor of the resolution to terminate Mr. Alderman, you knew that he was a 20-year employee of the school system?

A Yes I did.

Q You knew based on your 12 years of experience with Mr. Alderman that he performed his duties as an employee in a satisfactory or more than satisfactory manner, correct?

A Yes.

Q And you knew when you voted in favor of that resolution to terminate him, that he had substantially assisted the county board in developing technology that was beneficial to the public education environment?

A Yes.

Q And you knew when you voted in favor of that resolution that on all of the value judgments that you made in connection of his conduct at that one moment in time or that one instance where it was the subject of a transfer leaving off his job, that he engaged in appropriate and sometimes helpful behavior to you?

A Helpful in some ways.

Q Okay. You despite all that, based on that one moment in time, and that one incident or his conduct at that one instance having you voted in favor of the resolution to terminate, the employee?

A I did.

Q You want, of course, to state too that Mr. Alderman was Teacher of the Year at one point?

A Yes, I did.

Q Do you know when that was?

A No.

Q Okay. Did you have any personal doubts about your decision?

A No I don't.

Q You mentioned that you were on the Board and there were not on the Board and then ran and got re-elected, correct?

A Yes.

Q The reason that you weren't on the Board was because you were removed, correct?

A That's right.

Q And Mr. Alderman was the individual that brought that removal on.

A That's right.

Q And he was successful in that removal act.

A Yes.

Q And he did that while even acting as the superintendent.

A Yes.

Q And the basis of the removal action against you was the fact that you were serving in two public offices at one time.

A That's the reason, yes.

Q And a state ruled panel agreed with Mr. Alderman and removed you from that school board.

A That's right.

MR. BLUMER: Could I have a minute to talk with Norman please?

ITSELF SPATIALING? Now. We'll sign off the record readily.

MR. HUBER: We can do it after a break or something.

(WITNESSES and a brief discussion was had off the record.)

MR. SPATIALING: Okay, we're back on.

MR. HUBER: Thanks.

Q You were the president of the Board at the time of Mr. Alderman's transfer hearing, correct?

A Yes.

Q And you, as part of the president's name of your responsibilities here, I think as you testified, I think means that the Board meetings operate more orderly, correct?

A Yes.

Q And you, of course, are aware that your mission is to hold everybody out of order and rule that they are out of order based on their conduct at a meeting, correct?

A I am.

Q And you chose not to do that in respect to Mr. Alderman at the hearing?

A I did.

Q That was a relevant question. You never ruled him out of order, correct?

A I didn't.

Q Okay. And during that hearing for almost the entire hearing Mr. Alderman was seated at a table like this?

A He was up a couple of times.

Q What, is given documents or exhibits to people?

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A: Yeah, in fact, yes.

Q: But for the vast majority of the time he was seated?

A: Yes.

Q: Remember how, as we are told, directly across from the Board?

A: Yes.

Q: And according to the Board about within hours regarding him as potential witnesses to, had about whether or not the Board members were legitimately qualified to sit on the Board? And you disagree with that because you felt like that that wasn't relevant to his transfer hearing?

A: That's right.

Q: But you would agree that if hypothetically a Board member wasn't qualified to sit, that that would call into question the integrity or the lawfulness of the Board's action?

A: If the Board member wasn't to be there, it should have been taken care of before that time.

Q: Okay, but if there was a Board member there that was disqualified by operation of law and it was later determined that that Board member was disqualified by operation of law, then that would give him...Adkins a way to challenge the Board's decision to terminate, would it not?

A: I wouldn't think so. You've got four other Board members.

Q: If there was a person at the meeting that voted to terminate Mr. Adkins and that person was not at a moment of law qualified to sit as a Board member, then would that not call into question at least the integrity of that one Board member's vote?

A. Marked that one Board member's, yes.

Q. And therefore Mr. Alderman is expert in questioning his transfer should be credited to question whether or not Board members are legitimately qualified to sit in judgment of him. Should he not?

A. I don't think so.

Q. During that meeting he was named?

A. No, I never heard Mr. Alderman come.

Q. He never threatened the safety of a Board member?

A. No, not the safety.

Q. And nobody handled him out on handcuffs like they did on April 8, 2002, did they?

A. No they didn't.

Q. You were a member of the Board when that happened, weren't you?

A. I was.

Q. And you remember that the reason that the school board looked, evaluate Mike Trippie in response to the president's direction at that time, which wasn't you, Mr. Trippie right?

A. That's right.

Q. And the reason that Mr. Alderman was looked out as threat of the community, in handcuffs, by a State Trooper, who by the way Mr. Alderman taught in school, was because Mr. Trippie did not want Mr. Alderman making a video tape of that meeting?

A. That's, yes.

Q And we filed a lawsuit after that didn't we?

A Somebody did. I don't know if you did or not.

Q And, we have exhibits in, but I'll represent to you that I was his counsel, I

don't remember if we named you individually, I think we just named the Board, didn't we?

A I think you named Dr. [unintelligible] and Mr. Reed.

Q Okay. And as a result of that litigation you all agreed to the

Alderman, didn't you?

A That was part of the settlement, yes.

Q And as part of the settlement you also were required to undergo training concerning the First Amendment and the West Virginia Open Governmental Proceedings Act.

A That's right.

Q And that training was to be publicly reported, which it was, and you were to sign a what you attended that, correct?

A That's right.

Q And you did that?

A Yes.

Q And you went to that training?

A I did.

Q You remember there talking about the First Amendment?

A Yes.

MR. BURRIS: I don't have any further questions.

ALICE SPATAPORE: Mr. Bailey?

MR. BAILEY: Just a couple following.

INTERVIEW

BY MR. BAILEY:

Q: Mr. Hokes asked you if you asked Mr. Alderman out of order during his earlier hearing. Is there a reason why you didn't?

A: I didn't feel that I could, you know. I asked him to stay on topic and I didn't feel the need to do it. I just didn't feel it would make any difference.

Q: Mr. Hokes, on behalf of Mr. Alderman, has asserted that following this latest settlement that there was a concerted campaign to terminate Mr. Alderman's employment. Are you aware of any campaign of that sort?

A: No.

Q: Have you ever had any discussions with other Board members or the superintendent about strategies or efforts to terminate Mr. Alderman's employment?

A: No, I haven't.

MR. BAILEY: That's all I have.

THOM SPATAPORE: Mr. Bailey?

MR. BAILEY: I don't have anything further.

ALICE SPATAPORE: I just have one question, just for my own satisfaction. If a Board member was in some kind of an illegal position and their capacity to be on the Board was in question, what is the procedure to take care of that and to remove them?

Who does it? I honestly don't know by law who. This notwithstanding. Who was that answered you as what I am asking?

MR. VANCE: These judges on a three judge panel.

JUDGE SPATAPORIS: As in Circuit Judges?

MR. VANCE: Yes.

JUDGE SPATAPORIS: And who appoints the panel, do you know?

MR. BUDER: The Supreme.

JUDGE SPATAPORIS: The Supreme Court? I'm just not familiar with that process.

MR. VANCE: I believe that's who.

JUDGE SPATAPORIS: Okay, so you had some kind of a hearing before a panel of Circuit Judges?

MR. VANCE: Yes.

JUDGE SPATAPORIS: Okay. I just wanted to know.

MR. VANCE: There was four of us.

MR. BUDER: Actually somebody else was represented here, correct?

MR. VANCE: Yes. From the juvenile department. At that time Dr. Farris, the superintendent was out and Keith Taylor, a Board member, there was nothing done with that. But both Keith Ford and I resigned one morning and then were appointed back the next morning or a morning after that.

JUDGE SPATAPORIS: Okay.

MR. BUDER: What year was that, Mr. Vance?

MR. TRACE: It's been, I finished out the two years and I am free as if's been you know, four years ago.

MR. HUNTER: It's a statutory imposed restriction. Judge.

JUDGE SPATAPOR: I know, I was just curious. Okay. Thank you.

MR. HUNTER: Please would you report back to me.

MR. BAILEY: I had somebody here to do it besides the Board.

JUDGE SPATAPOR: Right and that's what I was asking. It wasn't sure exactly how it occurred legally. All right, well why don't we take a break here. We'll go off the record.

(Court in Recess)

JUDGE SPATAPOR: Okay, we're back on the record. Mr. Hunter, what is your last subject?

MR. BAILEY: Scott Madison.

JUDGE SPATAPOR: Okay.

(Witness Seated)

VERIFICATION:

SCOTT MADISON

Having been first duly sworn, I declare that, my/their/its follows:

DIRECT EXAMINATION

BY MR. BAILEY:

- Q Mr. Madison, would you state your name for the record please?
- A Scott Madison.
- Q And where do you currently reside?

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A. Barlow?

Q. And what county is Barlow?

A. Fankenstein.

Q. And do you have children in the public school system there?

A. Yes I do.

Q. And what are their ages and grade levels?

A. I have a daughter that is going to be a sophomore this year and I have a son who just graduated this year.

Q. And what schools did they attend?

A. Fankenstein County High School.

Q. Mr. Melton, did you attend a meeting of the Board involving a possible hearing for Mr. Alderman?

A. Yes I did.

Q. And could you explain to the Administrative Law Judge why you were in attendance at that meeting?

A. I was in attendance in that meeting. I was concerned. I had heard that Mr. Alderman was going to be transferred to the high school in the teaching position and that concerned me since I had a child in the school.

Q. And where were you seated? What you seated in the meeting room throughout the hearing?

A. Yes I was.

Q. And could you describe to the Administrative Law Judge what you observed in terms of Mr. Alderman's conduct during the hearing?

A. Well, I was there, because I was there to lose his. Alderman placed his name for his job and what was going to happen with his job. What I understood was another story. Actually I was pretty appalled but I heard what I heard and if someone could speak to their expenses that way and still keep their job. I heard everything I think but Mr. Alderman placed his name in for as his position with the school board.

Q. And could you be a little bit more specific as to what, indeed, you were appalled about?

A. I know Mr. Vance was called a thief. I think you were told that you were there illegally maybe. Don't quote me on that exact words. I know one of the board members was called an adulterer. I think Mr. Vance was accused of being out to get Mr. Alderman. That's all I can think of off the top of my head. There might have been more, but.

Q. How would you characterize that particular meeting in terms of what you observed and as compared to other board meetings that you've attended?

A. It was very unprofessional. My personal opinion, if I was there to get my own salary to save my job, I would have been there to try to save my job, not discuss other people's things that was not the time and the place for. I was appalled as well as everyone else that was there, the way it was conducted I guess. And I know on several different occasions Mr. Vance told Mr. Alderman that he needed to get back on track and that never did happen. Elsewhere Mr. Alderman wanted to ask some people in the audience, but I think he was run up and he never had the opportunity to do that because of these other issues.

Q Do you have any concerns as a parent and a citizen of Presidencies County about meetings of this sort occurring in the future?

A Oh, absolutely. Because it is not the dollars, I mean to me it was a stolen meeting. It served no purpose whatsoever. I mean the meeting basically did not serve a purpose for what we were there for. Yeah, I do have concerns of other meetings being like this. I have no one wants to see a meeting being conducted like that. It was just very disrespectful to thought and did not represent our school system the way it should have been represented. I mean I don't know if I answered your question properly or not.

MR. BARNES: I think that will close on Direct Examination.

JUDGE SPALFORD: All Right.

CROSS EXAMINATION

BY MR. BARNES:

Q So my name is Kevin Barnes. I represent Mr. Kurtman, the Defendant. Did you attend the termination hearing?

A No, I did not. The morning I was at was not the termination, no.

Q You are aware that the Board subsequent to that transfer hearing voted to terminate?

A I have no idea.

Q At the end of today you don't know that Mr. Kurtman has been reinstated and that's why we're here today?

A Oh, yeah. But I was not at the meeting. I didn't get ahead the meeting.
No.

Q Why didn't you attend the termination meeting if you had those concerns?

A I don't know why I didn't attend. I was a business and didn't see a lot of those meetings I never attend, I try to attend the ones I can.

Q Well, but you don't have a specific recollection right now as to whether or not it was a business responsibility that pertained to you?

A No, I don't.

Q And at the termination hearing, you don't have any personal knowledge of how Mr. Abidman behaved there, correct?

A No, I mean I mean I don't.

Q Have you had any discussions with anybody about how Mr. Abidman behaved at the termination hearing?

A No, I have not.

Q Now prior to the termination hearing, did you ever attend a Board meeting where Mr. Abidman complained to the Board about the manner in which the school board spent funds related to the golf team or the golf program?

A Yes, I was.

Q And what's your connection to the golf team?

A I had a son that played golf. I traveled with the golf team pretty much every match. I helped the coach out and I provided transportation.

Q So you were very involved in the golf program?

A Yes I was.

Q And you attended that meeting where Mr. Abidman complained about the golf expenditures, correct?

A Yes.

Q Why did you attend that meeting?

A Because he was there to consult about, we went there to represent the golf team.

Q All right. And did he make any personal complaints about how you handled anything in respect to the golf team?

A Yes, actually he did. He made a comment that our as parents should be handling these things instead of the money, I don't know what his exact words were, but.

Q And how did that make you feel?

A It upset me because not only me, but Jimmy, which is the golf coach, and Johnnie, which the assistant golf coach, spent a lot of personal money as well as I did. I probably spent thousands of dollars on the golf team.

Q So you're upset about his criticism regarding your involvement in the golf team?

A Oh absolutely, yes.

Q And you're still upset about that to this day?

A Oh yeah, most definitely.

Q And at that meeting concerning Mr. Alderman's complaint about, let me back up. He complained about, his concern was a possible misallocation of funds, correct?

A I believe that was his wording.

Q And at that meeting he believed in a responsible manner?

A I'm not sure I would call it a responsible.

Q What time irresponsible, about it?

EXHIBIT TRANSCRIPTION COMPLETE
(Page 43A.1.001)

A. Well, I don't think you're at a board meeting, and you have several, and tell the parents that are there representing, that have kids playing on the golf team, that we have the five richest people in the county.

Q. What is this a public meeting, correct?

A. It may be a public meeting, but I don't think that's the place for it. Maybe you do. I don't.

Q. Well, if it's not the right place for Mr. Alderson to criticize the school board at a public meeting, where should he do it?

A. Oh, I'm not talking about criticizing the school board. I'm talking about personally addressing me as an individual or any other parent as an individual.

Q. And did that upset you when he personally addressed you at the meeting?

A. Uh no, not actually at the meeting. I mean he can tell me what he wants, he can criticize the referendum in the county if he wants. I mean that's not new. But if he wants whatever he wants to. That would be great, but that's another issue.

Q. Okay, you don't really take issue to the fact that he wanted to say that at a public meeting?

A. No, that's not the place for it, but I mean if he chooses to do that I guess he has a right to do that.

Q. You might overrule that decision, but you agree that it is constitutionally protected criticism, that?

A. It seems, yes.

Q. And did you, after the meeting, have any conversations with Mr. Alderson?

A You mean like that?

Q After the meeting when the expenditure on the golf team was discussed?

A Yeah, I believe he pointed his finger at my nose.

Q That was outside?

A Yes that was outside.

Q Did you call him any name?

A I believe I called him something, yeah.

Q Did you call him an idiot?

A It could have been. That's what he says. I don't remember that.

Q But you can't dispute that?

A No, I cannot.

Q So after the meeting when your activities were questioned concerning a possible misbehavior of funds, you were upset and called on Mr. Alderman?

A Oh, absolutely.

Q Was anybody present when you were upset and called on Mr. Alderman?

A Pretty much I believe everybody was there. A lot of people. I don't remember who was and there.

Q And during that meeting when he talked about the golf team he never stated, did he?

A Not that I know of, no.

Q You've probably never even heard Mr. Alderman ever state, have you?

A Not that I know of, no.

Q And you are aware that this is a preposterous?

A: Yeah.

Q: And you're aware that he also was an elected County Commissioner at one point?

A: Uh-huh.

JUDGE SPATAFORO: Can you answer our final.

MS. LUNN: Yes, for the record.

A: Oh, I'm sorry. I'm sorry.

Q: And was anybody in this room present, besides Mr. Alderman obviously when you wanted him?

A: I don't know. I don't think anybody in this room was there, no.

Q: And during that meeting, besides the comment that you didn't like, although you recognize it is constitutionally protected, during that meeting concerning golf expenditures, Norman addressed his concerns as a member of professional golf critical matter to the Board?

A: I wouldn't call them professional, but.

Q: There was nothing inappropriate about what he did, or how ~~of~~(readable) in the Board?

A: Well depends on what your norms and values are, whether they're appropriate or not. Maybe to you they may be fine. To me they weren't.

Q: But as far as how others, there was, you have no recollection that he cursed anybody during that meeting?

A: Oh, no.

Q: Did he threaten anybody during that meeting.

A No.

Q And certainly he did so since during that meeting?

A No.

Q And you would agree that, well here, much money was in question concerning the golf team expenditures?

A Minimum \$2500.00.

Q That's a pretty significant amount of money, would you agree. Especially in terms of the golf team budget I see.

A Well, yeah.

Q What's your total budget?

A Well, we don't have a budget. The parents spend most of our money. I would speculate that that, previously on the golf team, you know.

Q But you would be concerned because as you mentioned earlier I think when Mr. Bailey was questioning you about your concerns regarding Mr. Abraham's behavior at the transfer hearing, you indicated you were unhappy and that was one of the concerns that you had, right?

A It wasn't the \$2500.00 I was concerned about. It was what it was going to do in the future. It wasn't the money issue. It was talking about our coach, personally. That was the thing that upset me. It wasn't the money.

Q But what I'm asking you is, when Mr. Bailey asked you about your concerns regarding my client's speech at the transfer hearing, you indicated that the statement you were concerned about what happened at that transfer hearing was because we're unhappy and you pay for the board's time?

A. Yes.

Q And you would agree that as taxpayers, which presumably Mr. Alderman is, that you also have the concern and a legitimate right to question whether or not funds are being spent appropriately by the public schools?

A. Oh yes.

Q Now you, how long have you been in Piedmont County?

A. I've been here 12 years.

Q And how long were you gone?

A. 17 years.

Q And I don't know if you realize, but what do you do? What is your job?

A. I work in business.

Q What business is it?

A. Metal and restaurant.

Q And what metal and restaurant is it?

A. It's the Red Carpet Inn.

Q And you agree that Mr. Alderman has been teaching in the public school system for approximately 20 years?

A. He's been in the school system, I don't know if he's been teaching.

Q When you agree that at one point he taught in the classroom setting?

A. Yes.

Q And you agree that he also was a Certified Gifted Instructor?

A. I am uncertain of that, no.

Q And you agree that he has taught on an individual/ individualized basis, no?

A Yes, I was aware of that.

Q And are you aware that he also had previously alerted the school board in respect to the development of technology that would benefit students and employees?

A No I'm not aware of that.

Q Would you have any reason to dispute my statement that during all of these different jobs that he has performed for the school board and all of the time that he spent as an employee that he has never been sued or even expounded?

A Oh, I don't have a clue. That's none of my business.

Q But you don't have any reason to dispute that?

A No.

Q You indicated too I believe that part of your business was at the transfer hearing, what you testified to was that your business was his absence of records in respect to what he said about particular board members?

A I think.

Q Are you indicating yes?

A Yes. My concern was the way he handled himself was professional. I questioned whether I wanted my child among a his classroom based on his conduct. That was my concern.

Q Did you ever do anything in respect to asking the board about Mr. Alderman's teaching credentials, record or disciplinary history or receive other information that would help you form an opinion about him, how he performed his duties as a teacher?

A No, I believe so then. I had seen everything I needed to see.

Q You heard it all on that one moment in time?

A That's -- I've seen Mr. Addelman in other meetings that I thought was not professional. First again, that's my personal opinion. The way he conducted himself.

Q At that meeting, Mr. Vance never called Mr. Addelman out of order did he?

A And Mr. Vance may tell Mr. Addelman that he was out of order?

Q Did he rule him out of order?

A I'm, I can't say for sure. He may have said he was out of the -- I don't know that for sure.

Q And at that meeting where Mr. Addelman, I mean this is his transfer hearing. You understood that right?

A That's right.

Q And certainly you can understand how somebody who is being transferred from a longstanding position with the Board just like you as your private capacity as a businessman, would become upset about that?

A Well sure, absolutely.

Q Especially if you felt that that transfer was an retaliation for having engaged in constitutionally protected activities (academic) public schools?

A It's possible. I mean I don't know anything about that, but --

Q But you could understand how somebody would be upset about that?

A Yeah.

Q If something like that happened to you, you'd be upset about it too wouldn't you?

A. Well, I might be upset but I think I would, yeah I would plead my case. That was the reason we were there. We had him talk about his career and what he has done for the school system. That's what I thought he was there for.

Q And, as you disagree with the method in which he conducted the transfer hearing, is well? In terms of the subject matter of his questioning of the Board?

A I don't, I do not state, I state as far as his questioning of the Board and the questions he had for the Board I don't know. I'm just, what I am saying is, the way that he conducted himself with answering people's things. That was my concern.

Q At the Board hearing when Mr. Yance said that Mr. Alderman was out of time. Do you recall when Mr. Alderman said, I want to object or something to that effect as to appear to not enough time for me to conduct my business?

A I remember that.

Q And you remember some people laughed at that comment because they thought it was funny?

A I don't remember people laughing, but it could have been.

Q If it's on the tape you wouldn't have any reason to—

A No, I don't remember that.

Q And when Mr. Yance said that Mr. Alderman's time was up and he listened to Mr. Yance and stopped his presentation?

A Not immediately, as he did not.

Q Well clearly thereafter?

A Clearly thereafter. Yes, you know he

Q And at that hearing, despite the witness that you have, you made no
any statements to the Board, did you?

A No. I wasn't aware that I was able to.

Q You didn't make any statements then?

A No, I did not.

Q After the hearing, did you have any discussion with any Board members
about this?

A About the actual meeting itself?

Q Yes.

A No I did not. I talked to Board members, but we didn't talk about the
meeting. I talked to Mr. Irwin.

MR. HUBB: Could there be a second judge?

JUDGE SPATAFORD: We'll go off the record.

[RECONSTRUCTION a brief discussion was had off the record.]

JUDGE SPATAFORD: Okay, we're back on the record.

Q Okay, I think I asked you this one, but as we sit here today, you have no
personal knowledge one way or another of how Mr. Alderman actually performed his
duties as a school board employee?

A Only hearing.

Q Have you read Mr. Alderman's Complaint and Answer?

A I've seen it, probably two years ago.

Q Have you been on the school?

A Not for probably a year.

Q And that's an electronic newsletter Mr. Adelman has talked to him of reports on things that are happening in the community?

A You mean the E-news? I don't know if that's what you call it?

Q I'm just asking you if that's what he does on that website?

A Right. I guess, yeah. Like I say, it has been almost a year since I've been on it, so I don't know what's on it now.

Q And since you've been around Boardman County you also know that Mr. Adelman is fairly active in respect to politics and public issues. Would you agree to that?

A Active in politics? I know that he was a County Commissioner back years ago, but I'm not aware of any other political.

Q Maybe in a broad way in places like. You would agree that Mr. Adelman is kind of into a website, or local meetings with public officials and politicians?

A I would agree with that, yes.

Q And do you recall when Mr. Adelman, being so far from starting, brought a removal petition against Mr. Vassar and I think two or three other school board members?

A I remember, it's only hearing. I only remember hearing about that. I don't remember when that was.

Q Did you remember a hearing, that Mr. Adelman successfully getting two school board members removed, one of whom was Mr. Vassar and the other one was Robert Frost?

A I remember hearing about that, yes. I don't know whether when that was.

Q And certainly whether or not a public official as highlyly qualified as you is a matter of public concern. Do you agree with that?

A Yes.

Q And were you also aware that on April of 2002 Mr. Adamson was at a school board meeting and when Russell Ford was the president and Mr. Vance was a board member that he was trying to violate tape a public meeting and do you remember that the rule of board had been amended because of that?

A Only hearing, that's all I remember.

Q And do you remember through hearing that as a result, it was when later said, did you also hear through hearing that he was handcuffed and they attempted to restrain him and put him in jail for that?

A I don't remember ever hearing he was handcuffed. I do remember hearing he was removed from a school board meeting.

Q Do you remember hearing that he was charged with crime?

A No I don't.

Q Do you remember hearing that Mr. Adamson filed a Federal Civil Rights Case over that?

A No I do not.

Q Do you remember hearing that as part of that settlement of that lawsuit that the Board formally apologized publicly to Mr. Adamson for their conduct in violating his constitutional (possible)?

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MR. DEB PLY: *Objection. This witness doesn't really know (Adkins) with all that.*

JUDGE SPATAPONE: *(Inaudible)*

MR. HUBER: Well, he testified that he is concerned about things that Mr. Adkins did and had concerns about that. It is entitled to show that the things that Mr. Adkins did are legitimate and constitutionally protected activity and wonder if that alleviates his concerns.

MR. MACOMBE: It is not over yet, need to go on that line, though.

JUDGE SPATAPONE: Right, I mean we've got all that evidence in the record.

Q: You don't (Adkins) anything I've said about any of that litigation?

A: No, I do not. Like I say, I wasn't there, no.

MR. HUBER: I have no further questions, Judge.

JUDGE SPATAPONE: Mr. Bailey?

MR. BAILEY: Just a couple of brief follow-ups.

RECESS

BY MR. BAILEY:

Q: Mr. Huber, your testified on cross-examination that you were upset at Mr. Adkins when he had conversations with you and directed comments toward you at a meeting at which he raised concerns with the board over golf money?

A: Right, that's correct.

Q: And you're also troubled about your observations and concerns over Mr. Adkins's complaint during the meeting hearing?

A: That's correct.

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Q Is there any connection between the fact that you were apart from Mr. Alderman about accounts he directed to send you personally and your statement that what you observed during the transfer hearing?

MR. FURBER: Objections, leading.

JUDGE SPATAPOLLO: You may answer.

A That was a separate issue. The golf situation had nothing to do with Mr. Alderman's account at the school board meeting. I would hope I was professional enough that I could separate the two. Yes, I had dinner with Mr. Alderman during the golf money and the way that I felt like we were being accused, but that had nothing to do with the hearing. I mean I think it's quite far from, the board meeting. And I would hope I was big enough person and a professional enough person that I could separate the two, which I did. As far as I was concerned the golf issue was over with when the meeting happened.

MR. KALLITY: That's all I have.

MR. HELMER: The golf issue was over with and yet you still attended the transfer hearing?

MR. HELMER: That was two separate issues. The golf money, the golf what had become my son was on the golf team. The transfer hearing was because my daughter which is still in high school and will be in high school for three more years. That was my concern.

MR. HELMER: But when you had that account you didn't know the benefits of observing what occurred during the transfer hearing.

MR. MARDEN: I already know your to them get it over that I did not want Mr. Alderman teaching my daughter to school.

MR. HUBER: Suppose tomorrow you had already come to that conclusion?

MR. MARDEN: Then I didn't want Mr. Alderman teaching my?

MR. HUBER: Yes.

MR. MARDEN: That is the—

MR. HUBER: I'm not hearing.

MR. MARDEN: Absolutely.

MR. HUBER: And, I think you answered that, but you never sought information from the school board concerning actual evidence about how Mr. Alderman dispatched his duties during his 30-year tenure as an employee of the school board?

MR. MARDEN: I don't need to, no.

MR. BALLET: Making further.

JUDGE SPATAPORE: Okay. Thank you so.

MR. MARDEN: Thank you.

MR. BALLET: Could you ask Mr. Hagen to come in please?

MR. MARDEN: Can I leave?

JUDGE SPATAPORE: Yes, you're free to go.

MR. MARDEN: Wednesday I don't need to be back Wednesday?

JUDGE SPATAPORE: Check.

(Where from)

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During 4-5pm, five days' worth to tell the truth, verified as follows:

DEEDS EXAMINATION

BY MR. BARRY:

Q: Mr. Egan, could you please state your full name?

A: My name is Thomas Michael Egan.

Q: And where do you currently reside, Mr. Egan?

A: I live in Ashburn.

Q: And what county is that?

A: Preschools County.

Q: And what's your occupation there?

A: I'm an education engineer.

Q: And what's your place of employment?

A: I work for the National Radio Astronomy Observatory.

Q: And is that a Federal Agency or a private agency?

A: I work for the Associated Universities who is a, that's an organization that

is hired by the (federal) Ministry of the National Radio Astronomy Observatory.

Q: And how long have you been a resident of Preschools County?

A: About seven years.

Q: And do you have an occasion from time to time to attend meetings of the

Preschools County Board of Education?

A: I do.

Q: And did you attend a meeting involving the Ashburn's transfer hearing?

A: I did.

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Q And do you remember the number per room in attendance at that particular meeting?

A I attended that meeting because it was a teacher meeting. I attend them because generally I have a vested interest in which teachers teach where. I have children in the system.

Q How many children do you have in the system?

A I have three.

Q What are their ages and grade levels and where do they go to school?

A I have a daughter who just graduated, I have a son who is a sophomore and a son who is a freshman this coming year.

Q Where, the children that you are going to have at the system and just where will they be attending?

A My last son just graduated Green Brook Middle School to the high school this last year, Poudre Valley High School.

Q And were you at the meeting when the same time that Mr. Alkerman's teacher leaving took place?

A Yes I was.

Q And now you stated you have an agreement to the principals to give confidentiality what manner?

A I could not everything, yes.

Q Could you hear everything that occurred?

A I could.

Q And could you tell the Administrative Law Judge what you observed in terms of Mr. Adkins's conduct during the hearing?

A I observed that Mr. Adkins behaved in a manner that I have never seen. I'm a professional engineer. I work with skilled workers. I've worked with commercial drivers. I've worked with merchant seamen and construction workers and I've never seen anyone behave like that when addressing their employer. It was disrespectful. I've just never seen anything like that before.

Q And specifically, what did you find objectionable?

A Well, he did not, the meeting had no agenda. We were all there for a reason. And that was never addressed while we were there. He was making his own agenda, making accusations. He was looking at the Board. He was, he said some things that I thought had to take place in a public forum in a public meeting.

Q Can you remember any specifics?

A Well, he accused one Board member of being an adulterer. He accused Dr. Low and Allen both of being thieves. He, you know, whatever words that's irrelevant, or whether or not that's true, it's irrelevant in the room; we were all there that night. And he, it was like a personal attack on these people. I was embarrassed for anyone who was there, you know the company was there. I was embarrassed that we would have a professional meeting for our school system who was behaving in this manner. Like I said before, the people who I've worked with, none of them don't have a professional code of conduct. Skilled workers don't, merchant seamen don't. But I've never seen anybody act like this and this kind of behavior in addressing their employer in addressing issues.

Q Did you discuss with Mr. Vanzo interacting with Mr. Adkins?

A Yes.

Q How would you characterize Mr. Vanzo's interactions with Mr. Adkins?

A Okay. Trying, attempting to keep things in the pocket. Attempting to keep things from escalating to the agenda. Attempting to get things done.

Q Do you have any minutes, resolutions, passed at Proctorville County Board, content of the matter you observed in school in case of future meetings?

MR. HUBER: Objections. Leading, speculation, relevancy.

JUDGE SPATANORE: I'll take that into consideration. Go ahead and answer.

A You have to have order in order to be able to conduct business. And you can't have someone come in and be able to just go off on the board. To just start shouting and bringing up issues that aren't part of the business at hand. If there's issues, they should be addressed, but they should be addressed in a manner that is business like, that is professional. We expect teachers to be professional. We expect them to act professionally both in the community and in the school.

MR. HUBER: That's all I have on direct examination of Mr. Huber.

JUDGE SPATANORE: Okay, Mr. Huber.

CROSS EXAMINATION

BY MR. HUBER:

Q Did any matter come before the Board? I represented Mr. Adkins. Before we get to Mr. Adkins's case I really have one question for you. Is it true that the conflict in the governing structure in the board in the community?

A Yes.

Q How do you know that?

A He's from Peachtree County.

Q And how long have you known him?

A About seven years.

Q Did you have any discussions with him about the hearing?

A Correct, I don't think so.

Q Well, when you were sitting out there today did you have any discussions with him?

A We didn't discuss much about the hearing, no.

Q Did you discuss anything about the hearing?

A I don't think so.

Q Nothing at all?

A No.

Q You don't like Mr. Hubbard, do you?

A I don't think that you can draw that conclusion.

Q I'm asking you?

A I'm not telling you.

MR. HUBBARD: Well, Judge, he has a relevant

REDACTED SPACED OUT: that is relevant, so you need to answer

Q And be honest. If you don't like him, you don't like him. You've testified to that before.

A: I don't know Mr. Albritton personally. I do, much of what Mr. Albritton does. I'm an informed citizen of Pendleton County. I try my best to keep on top of what's going on and I can tell you that I don't like the fruits of Mr. Albritton's labor.

Q: Now some of the fruits of his labors though, have been successful. For example, when you state that one of the fruits of his labor was when he brought a removal action against Pendleton County school board members and successfully removed Kenneth Pooland his. Vices? Were you aware of that?

A: I don't think that I would consider that a successful action.

Q: But were you aware of it?

A: Yes.

Q: And you were aware that he represented himself?

A: No.

Q: Well, you were aware that he [Sho] is known over it, correct?

A: Yes.

Q: And you were aware that that suit was successful in removing two paid or offside?

A: Yes.

Q: And another fruit of his labor was another motion lawsuit where Mr.

Albritton sued the Board after he was accused while attending a Board meeting. Do you recall?

A: But are you trying to convince me I'm wrong, I mean are we going to go through all the things he's done or are you just going through the things that—

Q For going to go through the things that I want to go through when I'm considering the union membership. Now are you aware that he filed a lawsuit over that issue?

A Yes.

Q And of course you would agree that public officials and public agencies have to respect the constitutional rights of citizens?

A Yes.

Q And you would agree that a citizen who sues a public agency to recognize that they have to respect constitutional rights is a positive benefit to society?

A As long as he is within the boundaries of appropriate behavior, yes.

Q And it's important for public officials to respect those rights?

A Yes.

Q And were you aware as part of the trial of his behavior that however, was that he received a formal apology from the school board for their actions?

A Yes.

Q And were you aware as part of the settlement of that lawsuit that the school board was required to undergo training concerning the First Amendment?

A Yes.

Q And did you attend any of that training?

A No.

Q Were you aware that they were required to undergo training concerning the Open Governmental Proceedings Act?

A Yes.

Q And you were aware that the purpose of that was that they had info.

Albrecht: correct/ because he went to film a board meeting?

A I understood he was arrested while trying to film a board meeting, yes.

Q Did you understand at that meeting, the publicly announced meeting?

A No. I'm not on the Board.

Q Now, you were at the trustee hearing, obviously had decided to attend it, correct?

A Yes.

Q And so when you made that decision, you made that decision independent of obviously anything that happened at that trustee hearing because it hadn't occurred yet, correct?

A Yes.

Q And, are you aware that Mr. Albrecht has been on the Pinal County School Board System for 20 years?

A Approximately. I know he is on the system. I had no idea how long.

Q Were you aware that he at one point received Teacher of the Year?

A First and, I do however have employees who work for me that talk about Mr. Albrecht....

Q I'm not asking you, I'm asking you about were you aware that he received Teacher of the Year?

A No.

Q Were you aware that he, you (A) is unemployed. Were you aware that as a 20 year employee he had might get retirement saving?

A: Yes.

Q: And are you aware also as a 20 year employee Mr. Alderman has taught as an individual differentiated instructor using?

A: Yes.

Q: And are you also aware that one of the goals of Mr. Alderman's labor has been to substantially assist the school board in developing its technology program? I am just asking you if you are aware of that?

A: I've seen his efforts.

Q: Are you aware that he has substantially assisted the school board as part of the team of his labor in developing technology that is beneficial to the school board and public students?

A: I can't answer that question, because if I answer yes I may mean he worked on it.

Q: That's all I'm asking.

A: No because I am not necessarily convinced that he did.

Q: Well if I represented to you—

A: Prove it.

Q: Well if I represented to you that the testimony has been that he substantially contributed to that, you don't have any reason or personal knowledge to dispute that?

A: Yes like I've seen the evidence that he's worked on. I've seen some of the other things he's worked on with respect to technology for the school board and have fully been understanding.

Q And you were then during this 28 year history when he has taught in the classroom setting when he has taught in a hybrid/online instruction setting and when he's worked with technology whether pre-copied or designed with the quality of work, that the school board has never once had cause to discipline Mr. Addelman?

MR. BALLEW: Objection. There has been no foundation that this witness would even be aware of.

MR. HUBER: That's what I'm asking. I asked him if he was aware of it.

MR. BALLEW: Well, I mean, someone asked him whether he had any input in his personal life or his personal history.

MR. HUBER: He might be aware of it through some other source. I am just asking, are you aware?

Q Well, let me say this to you. Do you have any reasons to dispute that the Board has never taken a formal disciplinary act or against Mr. Addelman.

A I have no way of knowing, until the next event on.

MR. HUBER: Correct. Can I have a second judge?

JUDGE SPALFORD: We'll go off the record.

(WHEREUPON a brief discussion was had off the record.)

JUDGE SPALFORD: Okay, we're back on the record.

MR. HUBER: I don't have any further questions. Actually I do have one quick question.

Q Were you aware that they terminated Mr. Addelman?

A Yes.

Q And you didn't attend the termination hearing?

A I did not.

MR. ELDER: There are further questions.

JUDGE SPATAPONE: Mr. Bailey, any follow-up?

MR. BAILEY: No, no thank.

JUDGE SPATAPONE: Okay, thank you sir.

(Witness leaves)

INTERLUDION

ALICE IRVIN

During this short duty period as told for truth, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY

Q Could you state your name for the record please?

A Alice Irvin.

Q And where are you currently employed, Mr. Irvin?

A At the Presidents County Board of Education office.

Q And what's your position there?

A Associate Superintendent and treasurer.

Q And would you outline your professional history with the Presidents

County Board, please?

A I began in 1976 as a teacher at Presidents County High School and I taught mathematics and business at that school until 1988. I moved into the Board office in 1988 beginning as the treasurer and I also was responsible for purchasing. Then a year thereafter, I moved as an interim superintendent for a period of time. Then as the

years went along their job responsibilities, were asked to work 1 day out of school on several times then became someone responsible finally. Within that job responsibility I've been responsible for transportation, maintenance, mostly director of the facilities.

Q When was your initiated as interim superintendent?

A Let's see, it was in 1994, I believe.

Q And Mr. Irwin, were you in attendance during Mr. Alderman's interim hearing that occurred in the spring of this year?

A Yes I was.

Q And why were you in attendance?

A I was there to fill these things. First I was asked to record the hearing, all the testimony and this case as well. I was also asked to ensure the witnesses and to keep all the files and make sure we got everything together, the tapes and so we're take back to the board office if they need to be transcribed and to take care of that.

Q Did you have anything to do with the facilities meeting in connection with the superintendent's previous position that Mr. Alderman he mentioned?

A No sir.

Q Now transfer doesn't involve a loss of pay is?

A No sir.

Q The same salary level, just different location, different duties?

A That's correct.

Q Did Mr. Alderman give you any advance notice that he intended to make someone spend your last evening?

A: "These were managed by the Evans, which is a website, that he wanted to remove Dr. Lee and I'm thinking and he indicated it would be, this information would be presented at this meeting.

Q: Did he personally notify you and indicate to you that he had any concern about the way you were conducting your (possible) responsibility?

A: Not, no sir. He asked me for some information through a friend of information about some money that we had for gold money. But that had been back in the fall. But not immediately before the hearing.

Q: Did you have any role or input of the decision made by the Board on the merits of the superintendent's recommendation that Mr. Alderman be transferred? Did you go into the room with them and engage in deliberations or contribute to their deliberations in deciding whether or not to approve the superintendent's recommendation?

A: No sir.

Q: Did you have any idea why Mr. Alderman's account of you during this particular hearing would have been relevant at all?

A: I'm still trying to figure it out. I have no idea.

Q: Let me ask you, how would you characterize Mr. Alderman's conduct during that transfer hearing?

A: It was a total shock. For someone to spend the time, instead of talking to the Board who was the decision making body we should keep his present job intact, he spent his entire time going around the table building and making accusations about our district members and to Dr. Lee and I. And at all the hearings that I have attended, I

have never had anyone address me. I'm simply there in court. That was my only purpose in being there. That was my only purpose in being there that evening.

Q Are you familiar with the Professional Code of Conduct?

A Yes sir.

Q And that code of conduct requires professional behavior by teachers, correct?

A That is correct.

Q Well, what's your understanding of why that code of professionalism is expected?

MR. HUBER: Your Honor, I'm going to object. This is already well established that did not and does not participate in these decision-making processes. His testimony regarding it, regarding why it is important is irrelevant to the ultimate question that the Court is presented with. And it is also duplicative. We have Board members who did participate in the decision that are testifying as to why they allege that it was relevant.

JUDGE SPALFORD: Mr. Bailey?

MR. BAILEY: I'm not sure I understood the objection, but I'm asking this witness as her capacity as a former superintendent and a longstanding professional educator with Platteau County Schools some background or some rationale for the Professional Code of Conduct. Why she believes that it is relevant and why she believes it is in place.

MR. HUBER: Dr. Law testified to that and he is the current superintendent. I don't know that what happened in the past has any bearing on this.

JUDGE SPATAPORE: Is any message not here-much irrelevant, but you can answer the question.

A: The Professional-Code of Conduct is, in Piedmont County is very important. It is in all school systems. There is a certain expectation that people in our school system are to have respect and to treat the people in authority, their school principals, the people they work with, the superintendent and the Board in a respectful way. We can disagree and work out our differences, but we don't go out and call people liars and thieves and make accusations. We have to have some sense of order in our school system. We expect it of students. We have a Student-Code of Conduct and if a student in a classroom does not obey the rules and treat people disrespectfully, then we deal with it. And we need to be the same with teachers. It is important. We live in a small rural county in Piedmont where it's expected.

Q: None of the kind of behavior that Mr. Alderman gave them the night of his transfer leaving, were talking, what kind of message would that send to students?

A: Well, it would certainly—

HON. JUDGE: That is speculation and relevancy again, Your Honor.

JUDGE SPATAPORE: I'll make the objection. You can answer.

A: The behavior that he exhibited that night would definitely send a message to students that you can say anything, do anything to anyone that is in a position of authority. It can also send the same message to our other employees. And we spend our time trying to deal with people that are being very disrespectful to Dr. Little or to the Board members and we can't get our business done. I mean there are serious things that we are trying to deal with the discipline of our students in our school. We have a high

discipline me as, particularly President Kennedy high school. This is trying to keep students involved and this kind of meetings, if we have employees who are rolling people back and forth and not being respectful while at the same time understanding that you are coming out, but there is a way and there is a time and a place to do it. And that obviously was not the time nor the place nor the way to deal with people.

Q Mr. Alderman during the transfer hearing, page 11, he says I want to talk about Alice from here. I want to talk about the last. I have two people and I'll say it to you that you're a thief. And then he is saying now you tell me these people are going to judge me. I didn't need my money from the golf team. Did you have any idea what Mr. Alderman is telling about when he's accusing you and Dr. Lane of stealing money from the golf team? Did you have any access to money maintained by the golf team that you could put into your pocket and steal it?

A No sir. The golf team, the money that was raised by the golf team, it wasn't even placed through the school accounting. And I had no knowledge whether the golf team had money or not. So I have no idea what.

Q And later during the hearing he says, Alice you're not going to get me because I'll have you removed. We'll get a removal person against you if necessary because you have stolen and therefore had enough. You are on trial my lady. You are not going to judge me when you have done things far worse than I've done. I've never stolen money from anybody. Did you have any capacity in evaluating or judging Mr. Alderman's opposition to the transfer?

A No sir.

Q In terms of your reputation, were you concerned that Mr. Albritton publicly accused you of smoking, drinking and lying?

MR. HUBER: Objection, relevancy concerning her reputation. That's not what we're here about.

MR. BAILLY: Well she does hold a position in the school system of trust which was broken.

JUDGE SPALANOSKI: You can answer the question.

A I've been very upset about the fact. And particularly the night of the hearing. After the board stepped themselves in to go into an executive session, I had one member of the audience.

MR. HUBER: Objection, that's hearsay testimony concerning what one member of the audience said.

MR. BAILLY: I don't have any problem with you saying weight.

JUDGE SPALANOSKI: I can admit hearsay and give it the appropriate weight, so go ahead and answer.

A I had one member of the audience tell me if I had stolen twenty five hundred dollars. I have been repeatedly asked at church, the grocery store, the community. We live in a small, rural community and everyone knows everyone in the entire county pretty much. And particularly if you were a teacher for nineteen years, you know all your former students. And I've never stolen any money from anyone. And I did not steal twenty five hundred dollars from golf money from anyone.

Q Do you have any problem with Mr. Albritton raising concerns about how golf money is handled?

A: I have the pretenses with anybody that comes into the Board of Education office to ask for any information. We have been over backwards to provide them to any individual or any group of people that come around ask for information. We try to make the place a very open place. The Board of Education has done the same for years and years. When I first started to work at the Board of Education office the Board meetings were not as open as they are now. People can express an opinion, they can make suggestions. The Board is very willing and open and they have moved the Board meetings to different areas of the county to accommodate the staff and to accommodate the community people. So I have no objectives to inquire asking for information. But I don't think it's appropriate to get up and call someone a thief publicly.

Q: Mr. Hoffa, were you a teacher at Pinal County High School when Mr. Alderman was named Teacher of the Year?

A: Yes.

Q: Was that Teacher of the Year for the entire county?

A: Well, each school for five schools, each nominated a teacher and then there was one jointly teacher chosen from that pool of five individuals.

Q: And I saw that Mr. Alderman, was he chosen a teacher at a particular school?

A: At Pinal County High School.

Q: And was he ultimately chosen teacher of the year for the county?

A: No.

Q: And was there certain criteria that is used to identify the teacher about student achievement or some work at the school?

A. No.

Q. How is that done?

A. It was nominations taken from the group of teachers and staff when it was difficult to get individuals that wanted to be nominated Teacher of the Year from Pontotoc High School because we had many people that worked very hard and you had to go through a lengthy application process and presented the school as various wish and most people just would prefer to be nominated for many years at a school and stress on open nomination mostly by the teachers.

Q. And it was nomination by the teachers at the school?

A. Yes.

Q. Where was this, was it in person?

A. No, it would have been I'd say sometime in the 1980s. Until then it is to at that moment before that was.

MR. DUBREY: I think that's all I have on direct.

REDIRECT EXAMINATION: Okay. Mr. Fisher?

REDIRECT EXAMINATION

BY MR. DUBREY:

Q. Mr. Fisher, my name is James Dubrey. I represent Mr. Alderman. Probably as previously I've represented him in the past. You testified that the school board is, I can't remember the exact words, but was to be willing and open to individuals and their concerns about the school board, correct?

A. That's correct.

Q And the school board thought there it necessarily wrong, here that nothing and again, at least in respect to Mr. Adelman, have they?

A I have never known any case that they haven't decided from the same as anyone else.

Q Were you on the board when on April 8, 2002 he was accepted as a school board member?

A I was never on the board. I have never been--

Q I'm sorry. Were you an employee of the Board at that time?

A Yes.

Q Were you in attendance at that meeting?

A Yes, I was.

Q And you were aware that Mr. Reed used to reflect Mr. Adelman the right to video tape that meeting?

A That's correct.

Q And that's what resulted in his arrest, correct?

A I don't know the details of his arrest.

Q Well you were there, right?

A Well I went out to make a phone call to make a file for a person that he had with him that evening. So I was not at the meeting, I mean I left the room.

Q You left the room when?

A Shortly after, well as he was being taken out in the process of his being taken out.

Q To remove everything from him (me) to meet the common condition point where the police officer was taking him out?

A Yes.

Q And you were aware that there was litigation around that, correct?

A Yes.

Q And you were aware that as part of that litigation, as part of the resolution of that litigation the Board was required to formally apologize in open to Mr. Alderman?

A That's correct.

Q So then the Board, then took to any original question. Since I necessarily always been open and willing to accommodate Mr. Alderman because certainly we would agree that having somebody arrested for engaging in constitutionally protected activity is not open and willing accommodation, correct?

ME: PAUSE 1/2. It is going to object (sensible) if the Board had anything to do with the arrest. ...

Q Do you think that prohibiting somebody from publicly filing a public meeting notice and willing accommodation?

A Well, it, he should have been permitted to file the meeting.

Q So you're saying that at least in respect to that question the Board was not open and willing to accommodate his desire to remove his constitutional ...

A He is, well, the Board didn't vote to not allow him to file the meeting.

That was a decision made solely by the Board members. Not by the Board.

Q Well did you agree that decision under meeting? Or did anybody oppose that decision at the meeting?

A. Mr. Ackerman.

Q. Besides that?

A. I don't recall anyone opposing it. I don't know for sure. I would have to see a copy of the minutes. I'm not sure.

Q. And you remember that as a result of that litigation and the settlement that the Board was required to undergo certain types of training, correct?

A. That is correct.

Q. Did you attend that training?

A. Yes.

Q. And this was training as required by the First Amendment and as required by Open Governmental Proceedings Act, correct?

A. I haven't responded to that. I just went to the meeting.

Q. But you attended it?

A. Yes.

Q. And it was put on by the Attorney General's Office, or someone from the Attorney General's Office?

A. I don't remember.

Q. Do you remember discussions about the First Amendment in that meeting?

A. Yes.

Q. Now, you testified that, well let me ask you about the issue with the Teacher of the Year. You're not saying Mr. Ackerman didn't become Teacher of the Year are you?

A. I don't know the answer.

Q. Is the statement to say you don't know any more or something like?

A. Well, it was like changed.

Q. Were you in attendance at his termination hearing?

A. No.

Q. You didn't attend the termination hearing?

A. No sir.

Q. You didn't record your own say--

A. No sir.

Q. Why not?

A. Dr. Law had secured a court reporter to do the recording.

Q. Have you reviewed the transcript of the hearing?

A. No I haven't.

Q. So you don't know the statements that he made in regard to the transfer hearing, he made likewise in the termination hearing?

A. No sir, I have not seen it.

Q. You also were questioned about Code of Conduct and stuff like that on the part of reduced board employees and on long term experienced you are also aware that that is a code, is what I said to in Progressive Discipline, correct?

A. Yes.

Q. And if I represent to you that that's Mr. Adamson's file and in that personnel file he has never been formally disciplined or reprimanded in any way, can you dispute that?

A. Well, I haven't seen the file.

Q Have you ever reviewed the file?

A No.

Q So you can't dispute it?

A I haven't seen the file.

Q And in the context of progressive discipline it is this also that, and it

includes even one of the policies of the school board if I can read it to you directly or that,

It shall be the policy of the board to strive to assist personnel in every way possible to

adjust their positions and to perform their duties satisfactorily. Do you agree that that is

also a policy of the school board?

A Yes.

Q And in respect to those two policies, let me back up. You're aware that

they terminated him?

A Yes.

Q A 28 year employee, they terminated him based on the conduct and his

speech at that one instance in time. Is that your understanding of the basis of

termination?

A I don't, I don't know why the termination was held. I wasn't at the

termination hearing.

Q Do you know, or have you ever reviewed the letter that Dr. Law wrote to

Norman concerning termination?

A I tried to let Law read it.

Q And where were you listening to him read it?

A In his office.

Q And who else was in the office?

A Mr. Traylor.

Q Anybody else?

A No, well Mr. Alderman.

Q Okay, who is Mr. Traylor?

A He was, he was a director of Federal programs. He works in the state of office.

Q So after listening to Dr. Egan read the resignation letter, you are aware that the resignation was based on his conduct at that transfer hearing and some things that he said on the website, correct?

A It was based on his behavior at the hearing because he is, his behavior is causing us an administration and the Board as a board of education not to do their job.

Q Was there any reaction at that Board meeting that got you to send out Mr. Alderman's transfer, correct?

A At which Board meeting?

Q At the transfer hearing that you are referring to where you have questions about his conduct, the subject of because at that meeting that they were going to conduct was Mr. Alderman's governance about his transfer?

A Correct.

Q And although you disagree with how he presented this case and with the governance that he made, at the close of the meeting, well let me back up. Mr. Vinton, you don't specifically recall Mr. Vinton ever asking Mr. Alderman out of order, formally saying you're out of order?

Q I made it more general. Any meeting prior to the transfer hearing with you over its substance when Mr. Adams raised his concerns about possible reallocation of funds as respect to the golf team?

A Yes.

Q And at that time you were the treasurer, correct?

A Yes.

Q How did any of that money ever come through your office?

A Yes.

Q And you actually, I think, maybe wrote a check in respect to some of the funds that were received. Did you not? In terms of distributing it out to the school system or something?

A Yes.

Q Okay, so when you were asked by Mr. Bailey about whether you had any involvement in the money or not, in fact you did receive that money and then cut a check to spend it, to put it back out to the school.

A Well, not according to the question that he specifically asked me.

Q But in effect, my question is, you were involved in the handling of that money?

A Yes.

Q Okay. And you would agree with your boss now or do know now that the law actually referred that to the State Superintendant?

A Refused?

A. He sometimes seemed angry that he needed to discuss why we were here.

Q. He never held him out of order?

A. No because it was, in my opinion, impossible. Every time he tried to speak to him he just continued going around to each person.

Q. So he never held him out of order and you disagreed with how he went around to each person and what he said?

A. I disagreed with what he said unlike why he said it.

Q. And that seems to be true, based on your recollection of Dr. East reading that letter in your presence with Mr. Alderman there, is that true for the testimony, correct?

A. Well, without reading the letter yes. I haven't read it.

Q. Well, I'll represent to you that it does. And we talked about the nature of progressive discipline right? Let me ask you this, were you at the meeting where Mr. Alderman presented his grievance concerns to the golf expenditures?

A. A grievance?

Q. Well, his complaint?

A. Yes.

Q. And at that meeting he was concerned about an apparent abuse of money or misdirection of money, correct?

A. Which meeting are you referring to?

Q. Before the transfer. A meeting prior to the transfer meeting where he talked about the golf team and the expenditures.

A. Are you talking about a meeting in the fall or in the spring?

Q Right and the documents that Mr. Alderman presented earlier questions about the allocation of those funds to the "State School Superintendant?"

A No, I wasn't aware of that.

Q And you certainly would agree with me that it is a legitimate, it is a matter of legitimate public concern for a citizen to have, to be concerned about the allocation of those school funds?

A He has that right, yes.

Q And at that meeting where he talked about that, not the transfer meeting but the prior meeting that we were discussing, he didn't call pointedly at that meeting?

A No, but he presented documents that were, he presented a warrant, an electronic warrant transfer to the Board of Education alleging that I had misappropriated twenty-five hundred dollars, but the warrant that he presented was a twenty-five hundred dollar warrant that pertained to the Funding Time Program.

Q So at best he might have been mistaken about his interpretation of the documents?

A Correct.

Q But he certainly has a right to make a mistake?

A Right and he has a right to complain and ask questions.

Q And that is what he did at that meeting and he did it in an open manner and there was no real problem at that meeting that was, modified that, you observed at the transfer hearing?

A That's right.

Q So when we're done so then it is some of this 10 year employees, former member of the year, relative family and kids in the community has worked in a capacity. Well let me back up, are you aware that Mr. Adkins worked in the capacity as a classroom supervisor?

A I worked with him.

Q Okay, and are you aware that he has also helped the Board and the schools develop technology to assist students in learning?

A Yes.

Q And are you aware that he has also been a classroom instructor?

A Yes.

Q Okay, so we have this veteran employee that has no disciplinary action in his file whatsoever, that has behaved appropriately in all other instances with the exception of having met the Board based on the conduct action and having been dismissed. Is that your understanding of the situation we have?

A That's correct.

Q And that is, is that your understanding of how the Pickens County School Board would use progressive discipline?

A It might not be called progressive discipline, but we can't operate in a school system when we don't have respect. We are disciplining our students. We are setting examples to teachers and professionals. And we are expecting certain standards and problems to be followed and certain rules of conduct to be followed. And we don't point and yell someone a liar and a thief. We have channels of communication where if you have a problem or you have a concern, we will try to see if we can resolve your

meeting or document we strive to do what's right. But when it gets to the point where every single thing you do there is a problem or a question, and you appear at a public meeting and you've posted information in advance, what you intend to do, when the meeting was scheduled for your employees, the union, of your employment. But you publish what you plan to do by telling my people and telling them that you, and confounding every and when you go out it's really necessary this Pinal County, it's not right that I should be accused of doing something that I didn't do.

Q But we had agreed earlier that in respect to that allocation of funds, that even if Mr. Alderman was mistaken, you agree that he had a legitimate right to question those expenditures?

A Right. But he had no right to call people thieves and liars and racketeers and those are words that no employer should have to put up with. We have school buses to maintain. And the more mistakes we do deal with there is cost of things publicly. We have student achievement to worry about. We have the highest discipline rate in Pinal County. We are working on new programs to curb those problems. And most of all we're setting an example. And if we as professionals do not set an example to the students that we work with and to the parents and to the community, how are we ever going to get any achievement accomplished. How are we going to better our and protect and make our students better citizens?

Q My question to you was in light of the 20 years of service that he has and in light of the fact that the conduct that you used to justify his termination occurred over a 20 million period at a transfer hearing where the Board conducted their business and did

member here, decides to terminate him, is that your understanding of the progressive disciplinary policy that the school board follows?

A: The manner in which he spoke to his superior, the Board of Education, the Board president sitting here today, our superintendent, and all the other board members and the audience, it was done in such a manner that there is no way that we can function and stand if we have employees who have no more respect for their professionals as a community and as every respect for students—

Q: Did you ever give Mr. Altheman a chance to explain from that behavior in the future?

A: What's that one?

Q: Are you aware of whether or not the school board ever gave him a chance to explain from that behavior in the future before terminating?

A: Well it seems to me—

Q: It's a yes or no question. Did they give him an offer? It's asking a yes or no question. Did you give him an offer to explain from that behavior in the future before they terminated him?

A: Any time Mr. Altheman—

Q: That is a yes or no question.

A: No, it isn't, because—

JUDGE STATAPOLE: She doesn't have to say yes or no if that's not her intent.

A: When Mr. Altheman was taken out of the board of education meeting prior to this incident, he was asked that the board apologize and every time there is a problem he expects an apology. And he expects to see acts that I have never done.

anything wrong. And if you think and believe that you're always right and you have the right to question anybody, at anytime, in any place, in any way, then the Board of Education would have every right to believe that he's never going to change. We can't manage a school system when we have people who are denouncing our people by calling on them and saying when it's not true.

Q Did you ever have a conversation with Mr. Lee or anybody else that, or are you aware of whether or not there was ever an attempt to provide Mr. Alderman with the opportunity to change?

A I'll tell you again no, he wants an apology. And if he is always asking for an apology, then he's not understood how he believes he's wrong. How can you change someone—

Q So you're upset that he asked for the apology?

A No, I just believe that he's never going to change.

Q So you believe that, but someone provided him the opportunity to do that? Is that true or not?

A I don't know how to provide someone an opportunity to—

Q Well as a superintendent of schools, certainly when you have problems with teachers, would you not be improvement plans sometimes?

A Well, but you don't have teachers, do you, we've done improvement plans but we have based on either problems with not having able to control discipline or problems with achievement or problems with—

Q What Mr. Alderman called an improvement plan?

A He's believed—

Q Was he offered an improvement plan?

MR. BAILEY (inaudible)

MR. HUNTER: It is a yes or suspension badge. And I can't respond to any questions.

JUDGE SPATFORDE: Okay, you can say yes or no and then explain your answer.

Q Was he offered an improvement plan?

A Not to my knowledge.

Q Was he offered a suspension without pay?

A I have no idea.

Q Was he offered a suspension with pay?

A Well he was suspended without pay.

Q And as far as you know the only disciplinary action that the school board considered as respect to that one incident in time at this one hearing, for this 20-year employee of the school board was suspension. That is the only alternative that was considered, wasn't it?

A I would have no knowledge.

MR. HUNTER: I have no further questions.

JUDGE SPATFORDE: Mr. Bailey?

MR. BAILEY: No, nothing.

JUDGE SPATFORDE: Thank you, ladies.

MR. BAILEY: Excuse me, please.

JUDGE SPATFORDE: Sir, you want to take a moment?

MR. FURBER: Yeah, sure.

(WHOLESTOPON a brief discussion was had off the record.)

JUDGE SPATAPONE: Okay, we're on the record.

MR. FURBER: I'm not going to present any witnesses. But I do have of course the documents that we submitted and my two additional documents on the CD that I have and we had a discussion off the record about it. Norman burned it last night and I'm fairly certain it's just the transfer hearing, correct?

MR. ALDERMAN: There are three copies and, well, it has a folder list of the other one, but I didn't get the other copy here. What you've got is the transfer hearing. You will have to put it in your machine and (inaudible) open up just one and open up whatever Microsoft's player is.

MR. FURBER: So we'll have that and then I've got (unintelligible) like that I want to submit.

JUDGE SPATAPONE: Okay.

MR. ALDERMAN: You have access for Mr. Bailey.

MR. FURBER: Yeah, I've got an extra copy.

MR. BAILEY: We want to avoid hardening the record with personnel. I think a copy was filed as a negative evaluation.

JUDGE SPATAPONE: I think it is just very close from the evidence that all of his evaluations were positive and he was never disciplined.

MR. BAILEY: I mean it's up to you.

JUDGE SPATAPONE: It's up to you. I mean this Panel is already not deciding this.

MR. HUBER: Yeah, it's just, I think it felt a little more comfortable. I know it is a history, but I'd feel more comfortable, because there is more stuff in there than just the absence of discipline. It's his personal conduct. It's his more entitlements. There's a lot of information in these letters, just giving us negative. There's a lot of positive things in there. So I'm sorry is you know, follow-up time.

JUDGE SPATAPORE: This today? That's your choice.

MR. HUBER: No, what if that, that would be.

JUDGE SPATAPORE: Okay. You want the personal file marked as not for release?

MR. HUBER: Yeah. And actually if there's any way that the Board could, actually, you know, after the hearing provide the full copy to the Judge as opposed to this. Because I'm not certain. I made this copy over the weekend when I was at the office and I've reviewed that I missed something or things were out of order. It came from you guys, you sent it to me. I just wondered if since you have probably the clearest most available copy, that you could just have, submit that to the Court.

MR. BAILEY: I just have one copy today.

MR. HUBER: Yeah.

MR. BAILEY: But I could make it, an extra copy and send it.

JUDGE SPATAPORE: Make another copy and mail it to me.

MR. HUBER: Would that be okay? I just want to be accurate.

JUDGE SPATAPORE: Okay.

MR. HUBER: This will be, all right.

JUDGE SPATAFORO: The CD will be discussed a Exhibit 44 and the personnel file will be discussed a Exhibit 47. And if there is no objection we'll admit them to the record, but the personnel file will be sent in the mail. Okay.

MR. BAILEY: We declare an additional witness that we were unable to produce today, that we thought we might have today Nicholas, but his testimony would be immaterial with that of Mr. Rogers and Mr. Huber.

JUDGE SPATAFORO: I think we would all appreciate not coming back for just one witness like that. Okay. Do you want to do another break?

MR. HUBER: Yeah. I would like to make a brief closing statement to your Judge, too.

JUDGE SPATAFORO: Okay. Do you want to do that before we pick a date for another?

MR. HUBER: It's up to you. Yeah, we can pick a day.

JUDGE SPATAFORO: Let's go off the record for a minute and discuss dates.

(WHEREUPON a brief discussion was had off the record.)

JUDGE SPATAFORO: All right we're back on the record and Mr. Huber wants a copy of the audio recording of the hearing and he's going to have that transcribed and I will have him up to the parties as far as deciding and the expense and testimony charges up to handle that. And we'll have simultaneous hearing scheduled on August 21st. Mr. Huber, did you want to make an end-closing?

MR. HUBER: Yes Judge. I think you can see from the evidence throughout the day we have a couple of theories as regards to the commission. One is obviously that it is in direct violation for protected activity. Everybody has testified and submitted to the

But that Mr. Alderman has been involved in at least two pieces of actual litigation that were successful against the Focke/Kaiser County School Board. One was a Federal Civil Rights Action where they funded him out in lawsuits because of engaging in protected activity. And the other was when he successfully represented himself (so to speak) removed the president of the Board (personally) from the Board and removed the former past president of the Board. And in addition clearly there is more than a gross degree case of retaliation in respect to these incidents. Also though, it's noteworthy because the conduct and speech that he engaged in, while we might not like it and they have not taken the conduct or speech that we would have chosen, and maybe at least it wasn't very useful and it was personally insulting to people or perceived such as that it is still a constitutionally protected activity. He did it in the context of either an internal forum that he has a constitutional right to have, or he did it in the context of his transfer hearing. Now when's moving from there over something that he did intended to interfere with the formation. All of his speech, especially speech as that transfer hearing is protected speech because it is done in the context of basically a Court proceeding or (virtually) proceeding and in respect to Mr. Alderman. So none of the speech can lawfully be used during the meeting as basis for the termination. In the termination was either an retaliation for the prior litigation, either an retaliation for his constitutionally protected speech. Now notice that Mr. Bailey has actually refused to sit in contact throughout the hearing. But there was no problem with that, in terms of hostilities regarding his conduct in the hearing. He was never held out of order. He was never arrested. He didn't physically attack anybody. He didn't threaten anybody. He was very emotional, and you know Norman's approach, that's what he does. And he was very excited and he was

spent his, my God, his time, his soul and spent in the context of a teacher knowing that he believed in his testimony for the constitutionally protected activities, even though I believe from the poll man's statement that he would be upset about that. And even if it is not constitutionally, it can't be the basis for a termination because it was lawful activity. Now what's also important about this is that they are using this very man, isolated incident in the entire history of this man's career that did not occur in school, that did not occur in respect to students, that had nothing to do with his job as a teacher. That is one isolated incident that occurred over 20 minutes in time is going to destroy a 20-year career with this school board. Everybody admits and everybody testifies that Norman was a good teacher and he did a lot of work and a lot of extracurricular activities. In 20 minutes can't wipe out 20 years, Judge. And then they take our progressive discipline system. I was sitting to see that nobody ever offered him a chance. Everybody's mind was made up. They were going to fire Norman Alderman. You heard the law which that even though the policy required them to meet employees on changing their behavior, they never provided him with that offer. They made the decision to terminate and as strong as they destroyed this man's career, his livelihood. It's his job. It's what he earned his family on. It's what he did when he grew up in West Virginia, as lived in Frederick County, West Virginia. Even our 20-minute rule 10 years. And I am not speaking out of here because there's a lot of witnesses that actually support him and I've got copies for them if you want. But one that I thought was particularly as good was look here under this is. This is a...

PLUCK: THANK YOU. (inaudible)

was suspended for working your own scheduled work hours and then officers classified conduct. And in that case the Director notified the school suspension of three days without pay and was ordered to attend some training. So we have two instances of very similar prior conduct that other administrators have judged to be state government board laws and you can't suspend somebody for that. One does a choice. And that's what didn't happen in this case Judge. And that's why Mr. Alderman should be reinstated.

JUDGE HUNTERFORD: MR. Basky, did you want to make any closing statement?

MR. BASKY: Yes. The conduct and merited nature of what Mr. Alderman did is not protected. It is not protected speech. It is not privileged because you said it is a hearing. And not only is it not protected, in this case it was a calculated instance. It was a premeditated instance. The various publications by Mr. Alderman that in the effect that brought out -- we going to require the employees referring to Superintendent Lane and Alan Ivins, who had nothing substantive to do with this transfer decision, demonstrates that the Director set out in I think a calculated effort to make his conduct by speaking himself with intention that he would point to later on to require that the Board reinstated him as opposed to a decision on the merits. He wanted to call a person's identity he could say, well I wasn't reinstated based on legitimate reasons, I was reinstated because I crossed the superintendent and I was reinstated because it called into question the conduct of Board members, not on the merits. I think that was a calculated attempt on his part, but it was premeditated, it was calculated and it is not one of the facts and circumstances that existed with respect to those other disciplinary actions that Mr. Haber referenced, but none of those employees were subject to a code of

conduct that required disciplinary action. I know Department of Highways employees are not. I think that was one classification of employment. And I don't really know whether or not these employees ultimately appreciated that it was not okay to offer protection and shake your fist at a supervisor or group about supervisory personnel. But what we have here, and I'll cover this more thoroughly in the proposed findings and conclusions, and it is probably best illustrated by Mr. Alderman's report that he filed. He is actually reporting that the Board of Education apologized to him. And if there is any mitigation to be had, and actually the response to this kind of behavior, this case doesn't present that opportunity. If you are going to mitigate punishment, it is with some assurance that the conduct that your dealing with is going to be mitigated. In this case there is actually no apology, no acknowledgment, not even in this hearing that it was wrong to accuse people of thievery and lying and other actions as evidenced. I mean there is no acknowledgment that it is okay anything to be concerned about. I think that the fear in this case points to this point and time that he has a right to do that. And we have heard from witnesses and people in the community, people who were in attendance about the reaction they had and the problems they saw concerning the sort of conduct and they are real concerns. They are real concerns. If you allow this kind of conduct to go unmitigated, you are engaging in a course of conduct where your ability to conduct your affairs is going to be undermined. And I think Mr. Alderman's conduct did have the effect of undermining the Board and its ability to carry out its duties and responsibilities and certainly if allowed to go back to his job with him pointing to the idea that, hey it is okay to call the superintendent a motherfucker any time I feel like it. Which I think he is saying. I think it does not present a case that calls for mitigation. Now I like Alderman

MR. BROCK: Yeah, it's agreed, so I'll put it in my brief, but I just wanted, because it is on point, I wanted to mention it to you. The last name was Horvath, first name Harry and then was our progressive-discipline segment. This was a 26-year employee with the Department of Highways. He became angry with his supervisors and made profane and insulting remarks. How disrespectful, Norman didn't make any profane remarks at least he made insulting remarks. He also drew knives from work to make his superior. And Norman, completely fulfilled, never physically involved or threatened anyone. A disciplinary action was filed with that result with the termination. They dismissed an employee. He filed a grievance regarding reinstatement. Respondent, it was found respondent did not have good cause to dismiss the Charging in light of mitigating factors such as length of employment, work record and other factors. And what they gave him was a 15-day suspension. A 26-year employee with a 15-day suspension that physically resisted correctly. Mr. Addresson was engaged in constitutionally protected speech and was terminated. They broke another grievance with the last name Finley and the first name Cheryl. Linn is how similar that was. Grievant was suspended for 30 days without pay following a three-month suspension for offensive and derogatory comments she made about her principal and another teacher in the words of good. Because, there is a wide range of unprotected language. Anything except that teacher hearing it qualified, is privileged under the law. But when she said those things, derogatory and offensive comments, which if you believe the testimony the comments Addresson at that time could have been considered derogatory or offensive. In this instance, the Board had terminated the individual and the Charging proved they did a three-month suspension with pay plus 30-day suspension without pay.

that said, well that was a heated moment thing, I don't think I have seen what I did. I wanted to restore dignity of Board members. I wanted to uphold the Superintendent and possibly involve he might have to confront me that's one thing. But he hasn't proceeded me into from the business of referring to people as lies and threats and employees and you can run a effectively run a school system and allow professional employees to permit at that sort of behavior. And that's the reason that the decision was made. A progressive discipline policy does not allow second chances regardless of the nature of the violation and the circumstances surrounding the violation. It requires you to look at each case on an individual basis and decide whether or not progressive discipline is appropriate or not. In this case it certainly doesn't and we would urge you to uphold the decision of the Board to terminate Mr. Alderman's employment. He is a 29 year employee, but his actions are what needed to be removed. It wasn't something the Board did to Mr. Alderman. It wasn't some conspiracy or calculated effort to remove. It was what he did. What he chose to do. What he deliberately and premeditatedly chose to do that resulted in the consequences to him. It wasn't anything the Board did. It was what he did.

JUDGE SPANFORD: Okay. That will conclude our hearing.